

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7153

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

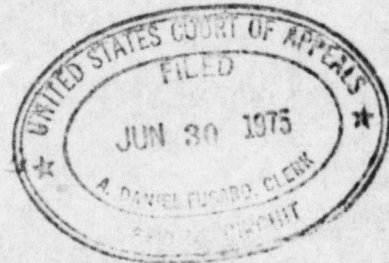
NO. 75-7153

RUTH JOHNSON, ET ALS.,
PLAINTIFFS-APPELLANTS,
vs.

HENRY C. WHITE,
COMMISSIONER OF WELFARE,
STATE OF CONNECTICUT,
DEFENDANT-APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT, BLUMENFELD, J.

A P P E N D I X



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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

REC'D MAR 24 1975

Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

RUTH JOHNSON, ELINDA WARREN,
WINIFRED H. BEHNING, PATRICIA MORGAN,
GLORIA SLIVA, SHARON COURTEMACHE,
ELEANOR HAYES, MARIA ORTIZ,
PATRICIA FRANKLIN, MACIE JARMON,
CORIENNE QUICKSALL, Individually
and on behalf of their minor
children

v.

HENRY C. WHITE, Individually and as
Commissioner of Welfare of the
State of Connecticut

For Plaintiffs:

Elliot Taubman (Macie Jarmon and
Legacy, Inc. Corinne Quicksall)
87 Main Street
Norwich, Conn. 06360

John C. Kucej (For: Intervening Plaintiff
John W. Fertig, Jr. Sylvia Collins)
35 Field Street
Waterbury, Conn.

For Plaintiffs:

Dennis J. O'Brien
Tolland-Windham Legal Assistance, Inc.
P.O. Box 358, 35 Village Street
Rockville, Conn. 06066

Mary R. Hennessey
524 Albany Avenue, Hartford, Conn.

For plaintiff:

William E. Clendenen, Jr. (Signed as
David M. Lesser 152 Tenth St.
277 Church Street 308
New Haven, Conn. 06510 Suites 310-311)

Mary R. Hennessey
Neighborhood Legal Services, Inc.
524 Albany Avenue
Hartford, Conn. 06112

For defendant:

Francis J. MacGregor
Asst. Attorney General
99 75 Meadow Street
East Hartford, Conn.

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

5 mailed

Clerk

6 mailed

Marshal

is of Action: A class
ion brought under 42
C. §1983, to declare
legal and unconstitu-
tional defendant's prac-
& policy which re-
tion arose at: duces the
ndard of need and lev-
payments in the public
istance programs. Also seeks
injunction and a 3-judge Court

Docket fee

Witness fees

Depositions

3-judge Court

DATE 1971	PROCEEDINGS	Date Order Judgment N
9/13	Complaint, Motion to Proceed in Forma Pauperis with order thereon granting same (Blumenfeld, J.), Motion for a Temporary Injunction and Memorandum of Law in Support of Temporary Injunction, filed and entered. Summons issued and together with copies of same and of Complaint, Motion, Order and Memorandum, handed to the Marshal for service. M-9/13/71	
"	Request for a three-judge court pursuant to Title 28 U.S.C. §2281, filed by Plaintiffs.	
9/21	Marshal's Returns Showing Service, filed. - Summons & Complaint	
9/23	Notice of Filing of Plaintiffs' Proposed Exhibits A-1 through A-17, filed by Plaintiffs.	
9/27	Notice of Filing of Plaintiffs' Proposed Exhibits A-18, filed by plaintiffs.	
9/27	Motion for Permission to Take Deposition of Commissioner Henry C. White in Forma Pauperis, Filed by Plaintiffs. Order entered thereon as follows: "Motion denied. The provisions of 28 U.S.C. §1915 do not specifically embrace the costs attendant on pre-trial discovery depositions. Assuming that the court has the power to impose the costs incident to such proceedings upon the Govt., it is not inclined to exercise its discretion to do so simply in order to satisfy the convenience of counsel and the parties in preparing and presenting the case. See <u>Step v. U.S.</u> 251 Fed. 2d 579." Sept. 24, 1971 Blumenfeld, J. M-9/27/71 Copies mailed to Atty Clendenen and Asst. Atty Gen. MacGregor.	
9/30	Notice of Filing of Plaintiffs' Proposed Exhibit A-19 Through A-27, filed by Plaintiffs.	
"	Notice of Filing of Plaintiffs' Proposed Exhibit A-28 Through A-33, filed.	
10/4	Calendar endorsement re Hearing on Motion for a Temporary Injunction and Request for a Three-Judge Court, as follows: "No hearing to be held -- Motion to be withdrawn within a few days." Blumenfeld, J. M-10/5/71	
10/7	Notice to Filing of Plaintiffs' Proposed Exhibit A, filed.	
10/18	Notice of Filing of Plaintiffs' Proposed Exhibits A-34 Through A-35, filed.	
10/15	Notice of Filing Amended Complaint and Motion for Temporary Injunction, filed at Hartford.	
"	Order to Show Cause for appearance at Hartford on October 20, 1971, at 10:00 A.M., entered. Blumenfeld, J. Copies handed to the Marshal at Hartford for service. M-10/18/71 Copy mailed to Attorney Lesser.	
10/18	Notice of Filing Plaintiffs' Proposed Exhibits, filed. (B-1 through B-8)	
"	Notice of Filing Plaintiffs' Proposed Exhibits, filed. (B-9 through B-22)	
10/20	Appearance of Francis J. MacGregor, Assistant Attorney General entered for the defendant.	
10/20	Marshal's Return Showing Service, filed. - Order to Show Cause	
10/19	Deposition of Henry C. White, filed at Hartford. Collard, R.	
10/20	Hearing on Application for Injunction. Plaintiffs' Memorandum of Law, filed. Plaintiffs' Affidavit exhibits B-1 through B-30 filed. Plaintiffs' Exhibits O thru Z; AA thru NN, filed. Plaintiffs rest. Defendant will offer Exhibit Nos 1 thru 5 which cannot be produced today. Defendant's Exhibits 6 through 9, filed. 3 Defendant's witnesses sworn and testified. Defendant rests. 2 Plaintiffs' rebuttal (Cont'd.)	

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D. C. 110 Rev. Civil Docket Continuation RUTH JOHNSON, et als v. HENRY C. WHITE, Ind. and as

DATE 1971	PROCEEDINGS Commissioner
	witnesses sworn and testified. Summation by Counsel 12:30 P.M. - 1:05 P.M. & 2:00 P.M. to 3:25 p.m. Court adjourned at 3:26 p.m. Decision Reserved. Blumenfeld, J. M-10/21/71
10/21	Notice of Filing of Plaintiffs' Proposed Exhibits B-23 through B-27, filed.
10/22	Depositions of Henry Boyle, Jean Seckinger and Richard Gertzof filed at Hartford. (Federal Reporters, R.)
10/26	Plaintiffs' Supplemental Memorandum, filed at Hartford.
"	Notice of Filing Plaintiffs' Proposed Exhibits 00-1 - 00-24, filed at Hartford.
"	Notice of Filing of Plaintiffs' Proposed Exhibit 00-25, filed at Hartford.
"	Notice of Filing of Plaintiffs' Proposed Exhibit pp-1 - pp-20, filed at Hartford.
"	Notice of Filing of Plaintiffs' Proposed Exhibit 00, filed at Hartford.
"	Notice of Filing Plaintiffs' Proposed Exhibits RR-1 - RR-4, filed at Hartford.
10/28	Notice to take Deposition of Caroline Packard or Jean Seckinger and Richard Gertzof on November 4, 1971, filed by defendant.
10/28	Memorandum of Decision on Plaintiffs' Motion For A Temporary Injunction, filed and entered. Ordered that a preliminary injunction pending final determination of the merits of this action entered against Henry C. White, Commissioner of Welfare of the State of Connecticut, enjoining him from implementing the Family Assistance Plan, as embodied in proposed Welfare Regulations Secs. 17-2-26, 17-2-27 and 17-2-28, as long as state of Connecticut continues to receive federal welfare funds. Blumenfeld, J. m-10/29/71. Copies mailed to Attys Clendenen, Bear, Bearse, Kahn, Creanne, etc. and Atty. MacGregor by Hartford Office.
11/2	Answer to Amended Complaint, filed by defendant.
11/9	Motion to Amend Complaint and Notice of Motion, filed by plaintiffs.
11/8	Motion for Contempt and Other Relief and Notice of Motion, filed by Plaintiffs at Hartford.
"	Pre-Trial Conference held in open Court. Hearing adjourned at 4:05 P.M. Blumenfeld, J. M-11/10/71
11/10	Court Reporter's Transcript of proceedings held on October 20, 1971, filed at Hartford. (Federal Reporters)
11/15	Hearing on Plaintiffs' Motion to Amend Complaint to Add as a Defendant, Elliot Richardson, Secretary of the Department of Health, Education and Welfare. "Motion denied." Blumenfeld, J. M-11/17/71. Copies mailed to all counsel, and to Henry Cohn, Asst. U.S. Attorney.
11/22	Placed on Trial List
11/22	Hearing on Plaintiffs' Motion for Contempt and Other Relief. Decision Reserved. Blumenfeld, J. M-11/24/71
11/24	Depositions of Caroline E. Packard, Nicholas Norton, Jean Seckinger (continued) and Richard Gertzof (continued), filed at Hartford. (Federal Reporters, R.)
12/6	Court Reporter's Transcript of Proceedings of November 8, 1971 filed at Hartford. Federal Reporters
12/7	Memorandum of Decision on Plaintiffs' Motion for Contempt, entered. "***. Under these circumstances, I hold the Commissioner is acting in violation of the preliminary injunction of October 28, 1971. It is, therefore, ordered that payment of special needs under

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DATE 1971	PROCEEDINGS	Date Or Judgment
	the policy of August 16, § 364, be discontinued and the previous method of paying special needs as they arise, which was in effect prior to August 16, 1971, be reinstated, pending the resolution of the merits of this controversy, as long as he continues to employ federal funds. Blumenfeld, J. Copies mailed from Hartford to Attys Clendenen and MacGregor. M-12/8/71 Copy to Asst. U.S. Atty Henry Cohn.	
12/13	Motion for Production of Documents, filed by plaintiffs.	
12/20	Appearance of Atty. Elliot Taubman of Legacy, Inc. entered for the plaintiffs, Macie Jarmon and Corinne Quicksall.	
12/23	Appearance of Atty. John C. Kucej and John W. Fertig, Jr. entered for the Intervening plaintiff, Sylvia Collins.	
"	Motion for Contempt, filed by Intervening plaintiff.	
"	Motion to Intervene, filed by Sylvia Collins.	
1972 1/5	Motion for Production of Documents, filed by plaintiffs. (M-1/5/72)	
"	Interrogatories to a Party Defendant, filed by plaintiffs. (M-1/5/72)	
1/10	Hearing on (1) Motion of Sylvia Collins to Intervene. "Motion denied. The sole purpose of intervention is to assert an individual claim by way of a contempt proceeding." (2) Motion of Sylvia Collins for Contempt. "Motion denied on the representation of the Atty. General that the problem complained of was caused by administrative oversight and that a new filing of an application will be acted on favorable." Blumenfeld, J. M-1/11/72. Copies mailed to all counsel.	
1/13	Objections to Interrogatories and Notice of Hearing, filed by defendant.	
"	Deposition of Charles Rosen, filed.	
"	Deposition of Richard Gertzof, continued, filed.	
1/16	Motion to Compel Defendant to Produce Documents and Notice of Motion, filed by plaintiffs.	
1/18	Motion for Order Compelling Discovery and Notice of Motion, filed by plaintiffs.	
1/13	Court Reporter's Notes of proceedings held on October 20, 1971, filed in Hartford. (Collard, R.)	
1/24	Hearing on Plaintiffs' Motion for an Order to Compel Defendant to Produce Documents. Granted by agreement. Blumenfeld, J. M-1/25/72	
"	Plaintiffs' Motion for Order Compelling Discovery "Over 2 weeks". Blumenfeld, J. M-1/25/72	
2/2	Order endorsed on Plaintiffs' Motion to Compel Defendant to Produce Documents, as follows: "Granted by agreement of counsel." 1/31/72 Blumenfeld, J. M-2/2/72 Copies mailed to all counsel.	
2/7	Interrogatory to a Party Defendant, filed by plaintiffs.	
2/14	Hearing on Plaintiffs' Motion for an Order Compelling Discovery. "Motion granted." Blumenfeld, J. M-2/17/72. Copies mailed to all counsel.	
2/28	Answer to Interrogatory, filed by defendant.	
3/3	Deposition of Prof. Charles J. Stokes, filed.	
3/6	Answer to Interrogatories, filed by defendant.	
4/4	Deposition of Jean Seckinger, filed.	
"	Deposition of Richard Gertzof, filed.	
4/3	Brief Amicus Curiae of the Department of Health, Education & Welfare, filed in Hartford.	
5/2	Deposition of Ken Hadden, filed.	
"	Deposition of Stephen Daniel Hoffman, filed.	
"	Plaintiff's Exhibit A for Identification Only, filed.	

(continued)

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D. C. 110 Rev. Civil Docket Continuation

RUTH JOHNSON, et als v. HENRY C. WHITE, Ind. and as

Commissioner

PROCEEDINGS

DATE 1972	
5/2	Hoffman Exhibits A, B, C, D and E for Identification only, filed.
5/4	Motion to Modify Preliminary Injunction and Notice of Motion, filed by defendant.
"	Defendant's Memorandum of Law Supporting Motion to Dissolve Injunction, filed.
5/12	Notice of Filing of Plaintiffs' Proposed Exhibits ZZ-1 Through ZZ-5, filed.
5/19	Notice of Filing of Plaintiffs' Proposed Exhibits ZZ-5A Through ZZ-41, filed.
5/22	Defendant's Motion to Modify Preliminary Injunction "over May 23rd". Blumentfeld, J. M-5/23/72
5/23	Defendant's Memorandum of Law, filed.
"	Plaintiffs' Memorandum of Law, filed.
"	Appendix I to Plaintiffs' Memorandum of Law, filed.
"	Hearing on the Merits and Defendant's Motion to Vacate Injunction. 4 Plaintiffs' witnesses sworn and testified. Plaintiff's Exhibits Hoffman 1 thru 11, 1-A, 1-2-3-A, 2-3-A, 1-B, 2-B and 3-B, filed. Plaintiff's Exhibits Ploch 1 & 2, filed. Plaintiff's Exhibit S-1 thru S-7 and ZZ, filed. 2 Defendant's witnesses sworn and testified. Defendant's Exhibits 10, 11, 23 thru 33, filed. Summation by counsel : 4:00 P.M. to 4:23 P.M. Defendant may file brief within 10 days. Decision Reserved. Court adjourned at 4:25 P.M. Blumentfeld M-5/24/72
6/5	Plaintiffs' Memorandum of Law in Response to Defendant's Reply Brief, filed. (205)
6/9	Court Reporter's Transcript of proceedings held on May 23, 1972 (Testimony of Richard Gertzof), filed at Hartford.
6/12	Ruling on Defendant's Motion to Terminate the Preliminary Injunction and Memorandum of Decision, Findings of Fact and Conclusions of Law, entered. The Court finds that the claimed deficiencies in the Connecticut Family Assistance Plan as originally proposed have been substantially remedied and that the plan as presently proposed complies with the requirements of 42 USC §602(a)(23), with the minor exceptions noted above. The threat of irreparable injury to the plaintiffs has been eliminated. The court, therefore, orders that the preliminary injunction entered on October 28, 1971, against the implementation of the plan be now terminated. It is further ordered that within a reasonable time from the date of this opinion, the defendant shall make the correction in the plan as set forth in part IX of this opinion. Except for the claims discussed in part VIII which are dismissed as prematurely brought, and the order against the defendant in part IX of this opinion, judgment may enter for the defendant, and it is SO ORDERED. Each party shall bear its own costs. Blumentfeld, J. Copies mailed from Hartford to Attorneys MacGregor, Crockett and Clendenen, et al M-6/13/72 Copies from New Haven to Attorneys Taubman, Kucej and Asst. U.S. Atty Cohn.
6/14	Defendant's Trial Brief, filed.
"	Defendant's Reply Brief, filed.
"	Defendant's Memorandum of Law in Opposition to the Granting of a Temporary Restraining Order, filed.
"	Motion for Permission to Obtain a Transcript of the Testimony of Witnesses at the May 24, 1972 Hearing in Forma Pauperis and Notice of Motion, filed by plaintiffs.
6/17	Judgment entered that the Preliminary Injunction, entered on October 28, 1971, against the implementation of the plan, is

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DATE 1972	PROCEEDINGS	Date Judgm
	hereby terminated; that within a reasonable time from the date of the Court's Opinion (June 12, 1972) the defendant shall make the correction in the plan as set forth in Part IX of the said Opinion; and that judgment be entered in favor of the defendant, on the merits, each party to bear its own costs. Earl, C. Approved: Blumenfeld, J. M-6/19/72 Copies mailed to Attys Clendenen, Crockett U.S. Attorney, Asst. Atty Gen. MacGregor, Attys Taubman and Kucej.	
6/23	Motion to Reopen, Set Aside, Alter and Amend Judgment, for Relief from Judgment, to Allow Further Evidence and Allow Reargument, for Rehearing and for Stay of the Execution of Judgment Pending Disposition of Motion, filed by Plaintiffs.	
"	Motion to Amend and Supplement Findings of Fact and Conclusions of Law, filed by Plaintiffs.	
"	Notice of Filing of Plaintiffs' Proposed Exhibit [42-T]-1, filed.	
6/23	Court Reporter's Notes of Proceedings of May 23, 1972, filed at Hartford. Collard, R.	
6/26	Hearing on Plaintiffs' Motion for Permission to Obtain a Transcript of the Testimony of Witnesses at the May 23, 1972 Hearing in Forma Pauperis. "Will be granted upon submission of Order." Blumenfeld, J. M-6/27/72	
6/28	CJA Form 21 authorizing free transcript of hearing on the merits and defendant's motion to vacate injunction, filed. Blumenfeld, J. Copies distributed.	
6/27	Notice of Filing of Plaintiffs' Proposed Exhibit, Affidavit of Anne H. Jessup, dated June 22, 1972, filed by plaintiffs.	
9/12	Court Reporter's Transcript of proceedings held on May 23, 1972, filed. (Collard, R.)	
9/20	Authorization for Payment to Court Reporter Paul Collard for transcript of Hearing on the Merits and Defendant's Motion to Vacate Injunction, in the amount of \$156.00, entered. Blumenfeld, J. Copies distributed.	
11/1	Notice of Hearing Re Motion to Reopen, Set Aside, Alter and Amend Judgment, for Relief from Judgment, To Allow Further Evidence and Allow Reargument, For Rehearing and for Stay of the Execution of Judgment Pending Disposition of Motion, filed by plaintiffs. Copy mailed to Henry Cohn, Asst. U.S. Atty.	
11/17	Order entered that plaintiffs be granted a transcript of the hearing on May 23, 1972 in forma pauperis in order to prepare an appeal. Blumenfeld, J. M-11/17/72 Copies mailed to all counsel and Henry Cohn.	
11/27	Plaintiffs' Memorandum of Law in Support of Motion, filed.	
"	Affidavit of Anne H. Jessup with attached papers, filed.	
"	Hearing on Plaintiffs' Motion to Reopen, Set Aside, Alter and Amend Judgment, for Relief from Judgment, to Allow Further Evidence and Allow Reargument, for Rehearing and for Stay of the Execution of Judgment Pending Disposition of Motion. Decision Reserved. Blumenfeld, J. M-11/28/72	
12/14	Notice of Hearing Re Motion to Amend and Supplement Findings of Fact and Conclusions of Law, filed by plaintiffs.	
"	Notice of Filing of Plaintiffs' Proposed Rehearing Exhibit A, filed by plaintiffs.	
12/20	Notice of Filing of Plaintiffs' Proposed Rehearing Exhibit B, filed by plaintiffs.	
12/26	Plaintiffs' Proposed Re-Hearing Exhibit C, filed. 7.3.11.5	

(continued)

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D. C. 110 Rev. Civil Docket Continuation RUTH JOHNSON, et als v. HENRY C. WHITE, Ind. and as Commissioner

DATE	PROCEEDINGS
1972	
12/26	Hearing on Plaintiffs' Motion to Amend and Supplement Findings of Fact and Conclusions of Law. Decision Reserved. Blumenfeld, J. M-12/27/72.
1974	
1/16	Plaintiffs' exhibits Oct. 20, 1971: B-1 thru B-30, O thru Z, AA thru NN. May 23, 1972 Hoffman Nos. 1 thru 11, 1-A, 1-2-3-A, 2-3-A, 1-B, 2-B, 3-B, ZZ, S-1 thru S-7, Ploch 1 and 2 returned
"	Atty. Wm. H. Clendenen, Jr., 152 Temple St., New Haven, Conn. Defendants' exhibits: Oct. 20, 1971: Nos. 6 thru 9 and May 23, 1972: Nos. 32 and 33 returned to Francis J. MacGregor, Attorney General, 99 Meadow St., East Hartford, Conn.
1/22	Acknowledgement of receipt of Defendants' Exhibits: Oct. 20, 1971: Nos. 6 thru 9 and May 23, 1972: Nos. 32 and 33, received Francis J. MacGregor, Asst. Attorney General.
4/8	Copy of letter to Mr. Henry Boyle, Commissioner of State Welfare Department from Attys. Douglas M. Crockett, William H. Clendenen and David M. Lesser with copy of statistical data and costs estimates, filed.
8/27	Motion for Temporary Injunctive Order, filed by Plaintiffs.
"	Temporary Restraining Order, entered. Defendant temporarily enjoined from in any way reducing any individual Family Assistance Program flat grant standard of need and corresponding payment of benefits pursuant to policies and practices about to be implemented by the State Welfare Department pursuant to Conn. State Welfare Dept. Bulletin dated August 1974. Order to remain in effect for ten days unless modified prior thereto. Zampano, J. M-8/28/74
8/30	Copy handed to Asst. Atty Gen. E. Walsh, at Hartford. Copies mailed
9/9	Appearance of Atty. Dennis J. O'Brien entered for plaintiff
9/10	Motion to Withdraw Appearance for plaintiffs, filed by Atty Stuart Bear.
9/9	Appearance of Atty. Mary R. Hennessey entered for plaintiff
9/12	Court Reporter's Transcript of proceedings held in Chambers filed. Collard, R.
9/17	Stipulation entered into by the parties continuing the Temporary Restraining Order until a decision is issued pursuant to a hearing on the merits. If a hearing on the merits is not held before December 31, 1974 then the order will terminate. Approved By: Blumenfeld, J. M-9/13/74. Copies mailed.
2/13	Appearance of Mary R. Hennessey entered for plaintiffs.
1975	Court Reporter's Transcript of proceedings held on Sept. 4, 1974 (in chambers), filed. Collard, R.
2/10	Order endorsed on Plaintiffs' Motion to Amend and Supplement Findings of Fact and Conclusions of Law, as follows: "Motion denied Blumenfeld, J. M-2/13/75 Copies mailed.
"	Order endorsed on Plaintiffs' Motion to Reopen, Set Aside, Alter and Amend Judgment, for Relief from Judgment, etc., as follows: "The motion is denied in all respects. Ruling on the motion has been deferred -- and deferred -- at the repeated requests of the parties who indicated that the matters raised by the motion were about (to) be amicably resolved. Feb. 10, 1975" Blumenfeld, J. M-2/13/75 Copies mailed.
2/20	Notice of Appeal from the Final Judgment entered on June 17, 1972 and two (2) Orders dated February 10, 1975, filed by plaintiff
"	Request for Authorization to Prosecute Appeal in Forma Pauperis filed by plaintiffs.

DATE
1975

Date Order
Judgment No

2/26

Order endorsed on Plaintiffs' Request for Authorization to Prosecute Appeal in Forma Pauperis, as follows: "Permission to Appeal in forma pauperis granted." Blumenfeld, J. M-2/26/75
Copies mailed to all counsel together with copies of Notice of Appeal. Copy of endorsed Request, Notice of Appeal and copy of docket entries mailed to U.S.C.A.

2/28

Objection to Plaintiffs' Request to Prosecute Appeal in
Forma Pauperis, Notice of Motion and Memorandum of Law in Support
of Motion, filed by defendant.

3/13

Order endorsed on Defendant's Objection to Plaintiffs' Request to Prosecute Appeal in Forma Pauperis, as follows: "Objection overruled with leave to raise it before the Court of Appeals." 3/12/75 M.J.B., U.S.D.J. M-3/13/75 Copies mailed.

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IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----X
RUTH JOHNSON, et al.,
:

PLAINTIFFS,
:

VS.
:

CIVIL NO. 14,620
:

HENRY C. WHITE, individually and as
Commissioner of Welfare of the State
of Connecticut,
:

DEFENDANT.
:
-----X

AMENDED COMPLAINT

1. Plaintiffs, individually and on behalf of their minor children and on behalf of all others similarly situated, seek a declaration of the illegality and unconstitutionality of, and an injunction against, the Defendant's practice and policy which reduces the standard of need and level of payments in the AFDC program. The Plaintiffs' challenge is based on the Fourteenth Amendment to the United States Constitution and the Social Security Act of 1935, as amended.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C. §1343.

3. Plaintiffs' action for injunctive and declaratory relief is brought pursuant to Title 42 U.S.C. §1983, 28 U.S.C. §§2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

4. The named Plaintiffs bring this action on their own behalf, on behalf of their minor children and on behalf of all others similarly situated. The members of the class are all persons eligible for AFDC assistance from the Connecticut State Welfare Department. The requirements of Rule 23 F.R.C.P. are met in that: the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

5.

a. The Plaintiffs Ruth Johnson, Patricia Franklin, Elinda Warren, Patricia Morgan, Gloria Sliva, Sharon Courtemanche, Corinne Quicksall, Macie Jarmon, all receive AFDC assistance from the Connecticut State Welfare Department.

b. Each Plaintiff and the class of Plaintiffs is faced with a reduction in her assistance grant on or about November 1, 1971. These reductions range up to 30 - 40%.

c. Each Plaintiff is a resident of the State of Connecticut.

d. The Plaintiffs' affidavits, attached to the original Complaint as Exhibit B, and hereby incorporated by reference

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the same as if they were fully pleaded herein, detail their individual situations and the effects of the Defendant's policies upon them.

6. The Defendant Henry C. White is the Commissioner of Welfare of the State of Connecticut and is charged with administering the welfare laws of the state.

7.
a. Pursuant to current policy which will expire on November 1, 1971, the Defendant purports to pay 100% of the standard of need to AFDC recipients. Need consists of basic needs, special recurrent needs, and special non-recurrent needs (Vol. I, Connecticut State Welfare Department Manual, §350). The standard of need and level of payments vary according to family size, age of children and demonstrated need for special recurrent and non-recurrent items.

b. Effective November 1, 1971, the Defendant, with certain exceptions hereinafter noted, has purported to combine basic needs, special recurrent needs, and special non-recurrent needs into a flat monthly grant pursuant to which payments will vary according to family size only.

c. Effective November 1, 1971, the Defendant, having combined said needs into a flat grant, will reduce the level of AFDC payments by a purported fifteen percent (15%).

COUNT I

8. Pursuant to the Social Security Act and applicable State law, the Defendant administers four categorical assistance programs which are designed to provide aid and services to individuals who lack funds to support themselves in health and decency: Aid to Families with Dependent Children [AFDC]; Aid to the Blind [AB]; Aid to the Permanently and Totally Disabled [APTD]; and Old Age Assistance [OAA].

9. The Defendant's proposed reductions in assistance grants affect the AFDC category only. Recipients of OAA, APTD, and AB will be unaffected by the proposed reductions. While AFDC recipients will receive less than 100% of their needs, recipients in the other categories will receive 100% of their needs.

10. Defendant's overriding purpose in reducing AFDC grants is to defray allegedly excessive welfare expenditures. A factor contributing substantially to rising welfare costs is the cost of inpatient and convalescent medical care. Recipients in the non-AFDC categorical programs are the predominant users of said medical services.

11. All categorical programs of the Social Security Act are united by the common purpose of providing assistance to needy persons who are otherwise eligible for aid. Paying less than 100% of need to AFDC recipients, while paying 100% of need to recipients in the other categorical programs, is an invidious discrimination which is barred by the Equal Protection Clause of the Fourteenth

Amendment. See, Jefferson v. Hackney, 40 U.S.L.W. (October 12, 1971).

COUNT II

12. Paragraphs 1 through 7 are incorporated herein by reference the same as if fully pleaded.

13. The Social Security Act and regulations promulgated pursuant thereto by the Department of Health, Education and Welfare require the standard of need to be applied uniformly throughout the state. Variation in cost standards by area within a state is impermissible unless justified by actual variations in need. 42 U.S.C. §§602(a)(1), (2), (3); 45 C.F.R. §233.20(a)(1), (2); Boddie v. Wyman, 323 F.Supp. 1189 (N.D. N.Y. 1970), affirmed, 434 F.2d 1207 (2nd Cir. 1970), affirmed, 39 L.W. 3517 (1971).

14. The standard of need for private housing, pursuant to which Defendant grants shelter allowances to AFDC recipients, varies from town to town according to a rate which is ten per cent in excess of the low-cost public housing rate in the town wherein the recipient resides. See, Vol. I, Connecticut State Welfare Department Manual, §§352.3 - §352.38.

15. The rental rate for low-cost public housing in a town bears no relation to the cost of private housing in that town. Rather, the rental rate for low-cost public housing is a function of the following: amounts paid by the public housing authority as principal and interest on outstanding bonds; costs for main-

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taining and operating the public housing project; actual reserves created to meet the largest principal and interest costs of bonds, for a one-year period, during the preceding fiscal year.

16. The Defendant's failure to promulgate a statewide standard, for determining the need of AFDC recipients for shelter and the amount of the shelter allotment, violates the Social Security Act, 42 U.S.C. §§602(a)(1), (2), (3); regulations of the Department of Health, Education and Welfare, 45 C.F.R. §233.20(a)(1), (2); and the Equal Protection Clause of the Fourteenth Amendment, since the determination of the standard of need with reference to the low-cost public housing rate classifies similarly situated AFDC recipients without regard to their actual need.

17. The Defendant's consolidation of the standard of need violates the Social Security Act, 42 U.S.C. §§602(a)(1), (2), (3); regulations of the Department of Health, Education and Welfare, 45 C.F.R. §233.20(a)(1), (2); and the Equal Protection Clause of the Fourteenth Amendment, since said consolidation was effected without reference to a state-wide uniform standard for shelter.

COUNT III

18. Paragraphs 12 through 17 are incorporated herein by reference the same as if fully pleaded.

19. 42 U.S.C. §602(a)(23), prohibits the Defendant from consolidating, on a statistical basis, the components of the standard of need unless the consolidation reflects a "fair averaging." Ro-

sado v. Wyman, 397 U.S. 397, 419 (1970). Section 602(a)(23) also requires the Defendant to have adjusted, by 1 July 1969, the standard of need fully to reflect changes in living costs.

20. Since the Defendant's consolidation of the standard of need is based upon a standard for shelter allowances which violates federal uniformity requirements, said consolidation does not reflect a "fair averaging," in violation of section 602(a)(23).

21. The Defendant's failure to establish a uniform statewide standard for rents, and his failure to adjust said standard for cost-of-living increases, violates section 602(a)(23).

COUNT IV

22. Paragraphs 1 through 7 are incorporated herein by reference the same as if fully pleaded.

23. The Defendant's purported consolidation of the standard of need was effected pursuant to an alleged random sampling of persons receiving AFDC assistance as of May, 1971. The period June 1, 1970 through May 31, 1971, was the base period pursuant to which basic, recurring and non-recurring needs of the sample population was allegedly averaged and consolidated.

24. During said base period, certain classes of persons were illegally denied AFDC assistance, and were thus excluded from the universe from which the sample was taken and the consolidation effected:

a. On May 28, 1971, the Administrator of the Social and Rehabilitation Service of the Department of Health, Education and Welfare, found that the Defendant had illegally denied AFDC assistance to working persons who were eligible therefor, pursuant to the earned income disregard requirements of the Social Security Act, 42 U.S.C. §§602(a)(7), (8), and valid regulations of the Department of Health, Education and Welfare, 45 C.F.R. §233.20, et seq. See, Connecticut State Welfare Department v. Department of Health, Education and Welfare, #71-1574 (2nd Cir. 1971); Campagnuolo v. White, #13,968 (D.Conn. 1971).

b. Working supervising relatives who are not the parents of the AFDC children were illegally denied assistance when their income exceeded their individual needs. In such cases, the entire family was illegally denied incentive earnings. See, Roberson v. White, #14,003 (D.Conn. 1971).

c. During the base period, where a woman and an unrelated man lived together only the woman and her children who were unrelated to the man could qualify for AFDC assistance. The man and his children were illegally denied AFDC assistance. Vol. I, Connecticut State Welfare Department Manual, §§204, 371, 3420; See, Solman v. Shapiro, 300 F.Supp. 409 (D.Conn. 1969), affirmed, 396 U.S. 5 (1969).

d. During the base period, the Defendant illegally refused AFDC assistance where siblings of the same parentage

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lived with different supervising relatives. See Connecticut General Statute §17-85 (1969).

25. Since the Defendant illegally excluded persons from AFDC eligibility, the sample and universe pursuant to which Defendant's consolidation was effected is unrepresentative.

26. Said illegal exclusion of persons from AFDC eligibility effects an impermissible reduction in the standard of need, in violation of section 602(a)(23).

COUNT V

27. Paragraphs 1 through 7 are incorporated herein by reference the same as if fully pleaded.

28. 42 U.S.C. §602(a)(23) requires the Defendant by 1 July 1969, to have adjusted the standard of need fully to reflect changes in living costs since the components of the standard were established.

29. The Defendant has failed to adjust the standard of need in the manner required by §602(a)(23), in the following respects:

a. The Defendant failed and refused to reprice all components of the standard of need and adjust the standard of need accordingly during the §602(a)(23) period of January 1, 1968 to July 1, 1969.

b. Cost-of-living adjustments were computed with reference to national average changes in the Consumer Price Index,

rather than with reference to Connecticut average changes in the Consumer Price Index.

c. The Defendant has failed to compute cost-of-living adjustments, at very least with respect to the following components of the standard of need:

1. Garbage collection\$359
2. Transportation\$354.1; \$358
3. Chore boy\$361.23
4. Essential Services\$361.21; \$361.22

d. The Defendant failed and refused to adjust the standard of need every six months as required by §17-2 of the Connecticut General Statutes.

COUNT VI

30. Paragraphs 1 through 7 and paragraphs 19 and 28 are hereby incorporated herein by reference the same as if fully pleaded.

31. During the base period 1 June 1970 through 31 May 1971, the standard of need did not include certain items which were part of the standard of need in January 1968, the date of section 602 (a) (23)'s enactment, or which were part of the standard of need during 1 January 1968 through 1 July 1969. Those items which were eliminated from the standard of need include :

1. Back to school clothing allowance;
2. School clothing;

- x 3. Promotion clothing allowance;
- x 4. Oversized clothing allowance;
- x 5. Telephone allowances for other than medical reasons or rural isolation, [See §356 and Departmental Bulletin No. 2210];
- 6. Replacement of lost or stolen cash;
- 7. ~~Temporary care of children~~ [§365];
- 8. ~~Excessive utility costs~~ [§364.41];
- + 9. ~~Emergency payments due to utility shutoffs~~ [§364.42];
- x 10. Essential services (except homemaker and chore boy) [§361];
- x 11. Moving expenses for reasons other than eviction [§364.3];
- 12. ~~Expenses incident to securing employment~~ [§354.1];
- x 13. Expenses incident to employment [§354.2];
- x 14. School expenses, e.g., books, materials, etc.;
- x 15. Sales Tax (clothing, furniture, appliances);
- + 16. Emergency Scrip;
- x 17. Food eaten outside the home [§§351.12, 351.13, 351.14];
- x 18. Personal allowance for beneficiaries with restricted activity [§351.4];
- x 19. Water rent [§352, p.3a];
- 20. Relocation fees [Departmental Bulletin No. 2039];
- x 21. Sales Tax (hotels and lodging houses) [§352.2];
- x 22. Hearing Aids (maintenance) [§363.1];
- x 23. Fees for services of conservator or guardian [§363].

32. During said base period, the Defendant restricted access to special grants in such a manner as to reduce the availability of those grants, as compared with their availability in January,

1968, and during the period 1 January 1968 through 1 July 1969.

33. The Defendant's consolidation, and limitation of access to special grants, violates section 602(a)(23), since said consolidation "alters the content of the standard of need in such a way that it is less than it was prior to the enactment of §402(a)(23)." Rosado v. Wyman, 397 U.S. 397, 419 (1970).

COUNT VII

34. Paragraphs 1 through 7 are incorporated herein by reference the same as if fully pleaded.

35. Pursuant to the Defendant's planned flat grant and alleged ratable reduction, the Defendant proposes to pay a limited number of items by special grant: These items allegedly include security deposits on utilities and housing, day care, housekeepers, property repairs, and needs relating to catastrophe or eviction.

36. Prior to July 28, 1971, the Defendant made emergency housing available to AFDC recipients on an "as needed" basis. Vol. I, Connecticut State Welfare Department Manual, §352, pp. 7-8.

37. Effective July 28, 1971, the Defendant restricted the availability of emergency housing as follows: In cases of eviction or an emergency need to relocate, the Defendant will pay rent in a hotel or motel up to a maximum of fourteen days only.

38. Said limitation on emergency housing impermissibly lowers the standard of need in violation of section 602(a)(23).

39. The Defendant restricts the availability of other special grant items. Said items were more readily available to AFDC recipients at the time §602(a)(23) was enacted and prior to July 1, 1969.

40. Defendant's illegal and unconstitutional actions have caused and will cause Plaintiffs irreparable injury. See affidavits attached as Exhibit B, to the original Complaint, which are incorporated herein by reference the same as if fully pleaded.

WHEREFORE:

Plaintiffs respectfully pray, on behalf of themselves, their minor children and all others similarly situated, that this Court:

1. Assume jurisdiction of this claim and set this case down for a prompt hearing;
2. Certify, pursuant to Rule 23 F.R.C.P. that this claim may proceed as a class action;
3. Grant a temporary injunction restraining Defendant, his successors in office, agents and employees and all other persons acting in concert and participation with them from causing irreparable harm to Plaintiffs by reducing their AFDC payments, in violation of the Social Security Act and the Equal Protection Clause of the Fourteenth Amendment;
4. Enter preliminary and permanent injunctions, pursuant to Rule 65 F.R.C.P., enjoining the Defendant, his successors in

office, agents and employees from causing irreparable harm to Plaintiffs by reducing their AFDC payments in violation of the Social Security Act and the Equal Protection Clause of the Fourteenth Amendment;

5. Enter final judgment declaring the Defendant's practice and policy of reducing the standard of need and level of benefits to be invalid under the Social Security Act and the Equal Protection Clause of the Fourteenth Amendment;

6. Grant Plaintiffs such other relief, including payment of all monies wrongfully withheld, as may be just and proper.

THE PLAINTIFFS

BY David M. Lesser

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203-366-4955

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In The
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUTH JOHNSON, ET AL.

PLAINTIFFS,

V.

HENRY C. WHITE, individually and as
Commissioner of Welfare of the State
of Connecticut

DEFENDANT.

CIVIL NO. 14,620

ANSWER TO AMENDED COMPLAINT

1. Paragraphs 1, 3, 5a &c, 6, 7, 8, 9, 10, 23, 35 and 36 are admitted.

2. Paragraphs 2, 5b, 11, 14, 16, 17, 20, 21, 24, 25, 26, 28, 29, 31, 32, 33, 37, 38, 39, and 40 are denied.

3. As to paragraphs 4, 5d, 13, 15 and 19 the defendant says he has insufficient knowledge on which to form an opinion and therefore denies them and leaves the plaintiffs to their proof.

Francis J. MacGregor
Assistant Attorney General
76 Meadow Street
East Hartford, Conn. 06108
Attorney for the Defendant

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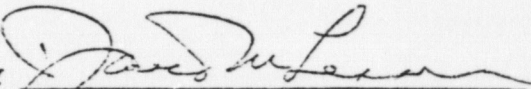
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4. The Defendant's policy and actions pursuant thereto will result in irreparable harm to the class of Plaintiffs;
5. The issuance of a temporary injunction will not cause undue inconvenience or loss to the Defendant, but will prevent irreparable injury to the class of Plaintiffs.

THE PLAINTIFFS

October 15, 1971

BY



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Stuart Bear
265 Church Street #808
New Haven, Connecticut 06510
203-787-5861

MICROFILM

OCT 29 1971

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUTH JOHNSON, et al

-vs-

HENRY C. WHITE, Commissioner
of Welfare, State of Connecticut

Civil No. 14,620

MEMORANDUM OF DECISION
ON PLAINTIFFS' MOTION
FOR A TEMPORARY INJUNCTION

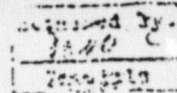
This case is before me on a motion for a temporary injunction. The plaintiffs seek anticipatory relief against threatened action by the Commissioner of Welfare.

The plaintiffs in this action are welfare recipients in Connecticut under the Aid to Families with Dependent Children (AFDC) Program. 42 U.S.C. §§ 601 et seq. ^{1/} They seek a temporary injunction to preserve the status quo pending final determination of the merits of their claims and to enjoin the Commissioner of Welfare from implementing the Family Assistance Plan (FAP), or "flat grant" system, designed by him and ordered to become effective November 1, 1971. The Welfare regulations, §§ 17-2-26, 17-2-27, and 17-2-28, authorizing the plan were published in the Connecticut Law Journal, Vol. XXXIII, No. 17 at 5, 6 (October 26, 1971). ^{2/}

^{1/} Connecticut participates in this program, which is jointly financed by the state and federal government.

^{2/} Jurisdiction is vested in this court under 28 U.S.C. § 1343 (3), which provides that the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, or any right, privilege or immunity secured by the Constitution of the



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U.S. DISTRICT COURT
HARTFORD, CONN.

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The record before this court includes affidavits submitted at the hearing on October 20, 1971, and depositions of both parties submitted on October 22, 1971. No answer or other responsive pleadings have been filed by the defendant.^{3/}

I.

The Connecticut Welfare Department has proposed to reorganize its system of AFDC payments, effective November 1, 1971. Under the system now in effect, grants are tailored to the individual needs of the family and vary according to circumstances. Connecticut purports at present to pay 100% of the standard of need. Under the new Family Assistance Plan, the department proposes to make two changes. First, it proposes to convert its system of individualized grants into a

United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States"

In addition to the statutory claims discussed herein, the plaintiffs have claimed that the FAP system violates the equal protection clause of the fourteenth amendment of the United States Constitution. Jurisdiction is thus proper under § 1343(3). See Johnson v. Harder, 438 F.2d 7 (2d Cir. 1971).

This action is brought by the named plaintiffs on their own behalf, on behalf of their minor children and on behalf of all others similarly situated. The members of the class are all persons eligible for AFDC assistance from the Welfare Department of the State of Connecticut. This is properly a class action under Fed.R.Civ.P. 23(a) and (b)(2) and (3). Cf. Eisen v. Carlisle & Jacqueline, 391 F.2d 555 (2d Cir. 1968).

^{3/}
At his request, defendant's counsel was given until October 27, 1971, to submit a brief.

"flat grant" system, under which the standard of need for a given family size would be computed by an averaging process. Payments would be based on this average need, rather than the particular needs of each household, with only a few items available outside the "flat grant." Second, it proposes to reduce its level of payments to recipients by 15%; that is, a family would receive only 85% of the average needs of a family of its size. Under Rosado v. Wyman, 397 U.S. 397, on remand, 322 F.Supp. 1173 (E.D. N.Y.), aff'd, 437 F.2d 619 (2d Cir. 1970), aff'd, 39 U.S.L.W. 3518 (1971), this proposed procedure would be permissible if "all factors in the old equation [for determining need] are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging" 397 U.S. at 419 (emphasis added).

The plaintiffs claim that the Welfare Department's Family Assistance Plan will violate the United States Constitution and 42 U.S.C. § 602(a)(23)^{4/}, that it will result in a reduction of payments to them that will cause irreparable injury, and that the hardship to be suffered by the defendant if a preliminary injunction is granted will be minimal in comparison to their own injuries if the motion is denied.

The defendant, however, urges that irreparable injury cannot be shown in the present case. He argues that there is no constitutional right to welfare benefits and that under

^{4/} According to 42 U.S.C. § 602(a)(23), a state must "provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

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federal law, the standard of need has been properly determined. He further argues that since the state is free to determine the level of benefits it will pay, errors in the method of computing the standard of need cannot cause irreparable injury.

II.

The traditional requirements for the issuance of a temporary injunction include both irreparable injury and the likelihood of success on the merits. See, e.g., Norwalk CORE v. Norwalk Board of Education, 298 F.Supp. 203 (D. Conn. 1968). However,

"[t]o justify a temporary injunction it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i.e., the balance of hardships tips decidedly toward plaintiff), it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d 738, 740 (2d Cir. 1953) (footnote omitted).

See also, Semmes Motors, Inc. v. Ford Motor Co., 429 F.2d 1197, 1205 (2d Cir. 1970), where a preliminary injunction was affirmed under the "imbalance of hardships" rule and did "not depend on a holding that Semmes had demonstrated a likelihood of success"

III.

The reduction or termination of welfare benefits has been recognized as constituting an irreparable injury. Doe v. Shapiro, 302 F.Supp. 761 (D. Conn. 1969), appeal dismissed,

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396 U.S. 488 (1970); Solman v. Shapiro, 300 F.Supp. 409 (D. Conn.), aff'd, 396 U.S. 5 (1969).

The poverty and needs of these plaintiffs is acknowledged and their present right to public assistance is not in dispute. Public assistance under the AFDC program "involves the most basic economic needs of impoverished human beings," 397 U.S. at 485, and aid "upon which may depend the ability of the families to obtain the very means to subsist" Shapiro v. Thompson, 394 U.S. 618, 627 (1969). The state's action "may deprive an eligible recipient of the very means by which to live" or render his situation "immediately desperate." Goldberg v. Kelly, 397 U.S. 254, 264 (1970).

Plaintiffs' statutory claims ^{5/} go only to the question of whether, in computing the standard of need for each family size, federal requirements have been met. They claim that the standard of need as set forth in the new regulations must be recomputed because the costs for shelter and other essentials were not "fairly priced" and also because other needs heretofore deemed essential by the state have been omitted from the recently computed standard of needs. The defendant contends that since the state has the power to reduce the level of payments by whatever percentage it chooses, notwithstanding the standard of need, the plaintiffs can show no irreparable injury - they are entitled to no greater part of what they need than the state in its policy determination decides to give them. The implication in this statement is that in no event will the plaintiffs receive higher benefits.

^{5/}
The plaintiffs do not now press their constitutional claims.

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But unless that power to set the level of benefits at a percentage of the determined need is exercised in conformity to federal law, the state cannot expect to continue to receive the very substantial contributions it now gets from the federal government. In Rosado, supra, the Supreme Court held that, although under 42 U.S.C. § 602(a)(23) a state to receive federal funds must recognize the actual standard of need within its boundaries and determine eligibility for welfare on this basis, a state is not required to pay 100% of the determined need. A state may "pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the actual standard of need." 397 U.S. at 413. Commissioner White in his proposed regulations has shown that the ratable reduction to be applied as of November 1, 1971, is 15%.

The effect of a proper computation of the standard of need may well be to raise it. This court is not required to assume that, simply because the state has the power to lower the level of benefits even further, it will do so. As the Supreme Court has stated, while § 602(a)(23)

"leaves the States free to effect downward adjustments in the level of benefits paid, it accomplishes within that framework the goal, however modest, of forcing a State to accept the political consequence of such a cutback and bringing to light the true extent to which actual assistance falls short of the minimum acceptable." Rosado, supra, 397 U.S. at 413.

Even assuming that a proper computation of the standard of need raises it and that the state nonetheless chooses to reduce the level of benefits paid in order to conform with

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budgetary requirements, this case is something more than "a meaningless exercise in 'bookkeeping.'" Id. A proper computation of the standard of need may well result in unequal variations in the standards for the different family sizes. That is, a recomputation may effect a 10% rise in the standard of need for a family of four, while only a 3% rise would be mandated for a family of three. In this event, the dollar amounts of the proposed levels of benefits would not remain the same, even if the percentage reduction were increased. Some recipients might well receive higher payments than those proposed, even within the present budgetary limitations of the Department of Welfare.

In light of the above, I find that the plaintiffs will suffer irreparable injury if the proposed FAP is implemented. Without resorting to words of emotional content it is clear that whatever administrative inconvenience a proper recomputation may entail to the defendant, such inconvenience is far outweighed by the severe hardship the plaintiffs will continue to suffer. See Rothstein v. Wyman, 303 F.Supp. 339, 348 (S.D. N.Y. 1969), vacated on other grounds, 398 U.S. 275 (1970). Accordingly, an injunction may be issued if "the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." Hamilton Watch Co. v. Benrus Watch Co., supra, 206 F.2d at 740. That issue will be considered next.

IV.

The Standard of Need for Shelter

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The plaintiffs have claimed that the basis used by the state to determine the standards of need for shelter allowance does not measure up to the requirements of federal law. For years, the Welfare Department has computed the standard of need for rent for AFDC recipients living in private housing by multiplying the cost of rent for a comparable unit of low-cost public housing in the same town by 110%. This figure, unless an exception is allowed, is the basis for calculating the rent portion of the family's budget. And as a part of the budget, it was this figure which was used to make up the averages now relied on by the state as representing the standard of need.

The plaintiffs claim that this method of calculating rent does not meet federal standards in that it does not fairly price the cost of shelter. The rents in low-cost public housing bear little relationship to market realities; they are based rather on costs of operation, which include very substantial public subsidies. See Holmes v. New York City Housing Authority, 398 F.2d 262 (1968); Conn. Gen. Stats. §§ 8-45, 8-48, 8-56, 8-57 and 8-58. They claim that this method of computing the standard of need for shelter violates the mandate of § 602(a)(23), as interpreted in Rosado, that a state "may not obscure the actual standard of need." 397 U.S. at 413. They urge that the standard of need must be based on reality, even if payments are not; and that a statewide survey of the rental housing market is needed to make the standard of need reflect reality. On the basis of the showing of the method for pricing shelter used by the state, a substantial question going to the merits has been raised.

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Items Excluded from the Standard of Need

The plaintiffs also claim that in computing the standard of need, the defendant improperly excluded numerous items from the calculation.

Under § 602(a)(23), it is impermissible for a state to exclude items from its standard of need which were a part of that standard on January 2, 1968, the effective date of the statute, unless it shows that these items are no longer "part of the reality of existence for the majority of welfare recipients." Rosado, supra, 397 U.S. at 419. The plaintiffs introduced some evidence that a number of items which were part of the standard of need on January 2, 1968, were eliminated from the standard before June 1, 1970. The "base period," upon which the defendant based his calculations of the average needs of each family size, was June 1, 1970, to May 31, 1971. Thus, these items which had been eliminated from the standard prior to June 1, 1970, and were no longer being paid were not reflected in the defendant's newly determined standard of need. Four types of clothing allowances, certain school and telephone expenses, and lost or stolen cash are alleged to be in this category of improperly excluded items. There is some circumstantial evidence to support this claim.

Second, the plaintiffs allege that certain items which were included in the standard of need during the base period of June 1, 1970, to May 31, 1971, were also improperly excluded from the defendant's calculations of the average needs of each family size. That is, they claim that "all factors in the old equation" are not accounted for. These items include the fees of a conservator or guardian, water rent

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for tenants, personal allowance for recipients with restricted activity, restaurant meals other than those occasioned by a catastrophic event, moving expenses for reasons other than a catastrophic event, allowance for a practical nurse, relocation payments, emergency housing for periods greater than fourteen days, replacement of clothing and appliances, except because of a catastrophic event, and rental of hotel or motel rooms, except for the reason of a catastrophe.

Defendant denied that any items were improperly excluded from the "fair averaging" of needs. It was explained that each item was taken into account, albeit under another category, or it is to be paid on an "as needed" basis under the new plan, or it was never really part of the "standard of need" recognized by the department. On the record before this court, however, it is impossible to ascertain whether the defendant's explanation "accounts for" all the items allegedly improperly excluded. The evidence received at the hearing indicates that the defendant's system for collecting the data upon which his averages are based made no provision for most of these items; nor did the instructions given to those department employees who collected the data make any provision for including them under different categories. Nor are they all included in the list of items under proposed § 17-2-28 of the Welfare regulations; under this section "the welfare commissioner may pay toward the costs of . . ." certain "emergency and service needs . . ." Further elucidation is called for. This may occur at a trial on the merits.

The issues raised here are notably more opaque than

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those in Rosado v. Wyman, ^{6/} supra, where very substantial categories of need, involving millions of dollars, were clearly excluded from the standard of need. See also, Rhode Island Fair Welfare Rights Organization v. Department of Social & Rehabilitation Services, 329 F.Supp. 860 (D. R.I. 1971). Here, the record before the court is imprecise and often inconsistent as to both the method of computation and the substance of the consolidated standard of need. Nevertheless, the plaintiffs have raised substantial questions going to the merits, which constitute a fair field for litigation.

For these reasons, it is ORDERED:

That a preliminary injunction pending final determination ^{7/} of the merits of this action enter against Henry C. White, Commissioner of Welfare of the State of Connecticut, enjoining him from implementing the Family Assistance Plan, as embodied in proposed Welfare Regulations §§ 17-2-26, 17-2-27 and 17-2-28, as long as the State of Connecticut continues to receive federal welfare funds.

October 28, 1971,
Hartford, Connecticut

M. Joseph Blumenfeld
M. Joseph Blumenfeld
Chief Judge

^{6/}

The plaintiffs have also claimed that certain items in addition to rent allowance have not been fairly priced under the requirements of § 602(a)(23). They also claim that certain classes of recipients were excluded from the statistical universe from which the defendant's sample was drawn, upon which the consolidated standard of need is based.

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The defendant did not adopt the court's suggestion that the hearing be consolidated with a trial on the merits. The court stands ready to expedite the assignment of this case for trial.

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UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT
DISTRICT OF CONNECTICUT
HARTFORD, CONN.

RUTH JOHNSON, et al

-vs-

Civil No. 14,620

HENRY C. WHITE, Individually
and as Commissioner of Welfare
of the State of Connecticut

MEMORANDUM OF DECISION ON
PLAINTIFFS' MOTION FOR CONTEMPT

Plaintiffs have moved for an order holding Henry C. White, Commissioner of Welfare of the State of Connecticut, in contempt of court for violation of the preliminary injunction entered by this court on October 28, 1971, enjoining the Commissioner from implementing the proposed Family Assistance Plan (FAP) in the state program of Aid to Families with Dependent Children (AFDC). Although familiarity with the issues of this case, as set forth in the memorandum of decision on the preliminary injunction, will be assumed, this motion, which relates to matters therein considered, requires consideration of prior proceedings.

On August 16, 1971, the Commissioner issued a policy statement and temporary regulation, Connecticut Welfare Manual § 364, providing that as of that date certain non-recurrent or "special" needs would be paid on a flat grant basis. These items are the costs of summer camp, scout uniforms, pre-employment expenses, installment payments, special clothing, household appliances, furniture, household

furnishings, appliance repair, appliance installation, telephone installation, and storage charges. These items had been previously paid on an "as needed" basis. However, as one segment of the averaging process undertaken in the development of the wider reaching FAP, the average cost of these particular special needs was determined, and a flat grant for them alone was put into effect on August 16 through § 364. Thus, the Commissioner's action of August 16 preliminarily put into effect one important part of the more encompassing FAP.

Thereafter, to give permanent effect to this temporary regulation, the Commissioner published in the Connecticut Law Journal of August 24, 1971, a notice, by which the Commissioner proposed

"to adopt regulations pertaining to the payment for certain non-recurrent special needs of beneficiaries of Aid to Families with Dependent Children This regulation will set forth that money for these certain non-recurrent special needs will now be included in the award check."

The next step was the filing of the original complaint in this case on September 13, 1971. It challenged the temporary regulation of August 16 (as well as proposed regulations respecting shelter allowances) on constitutional and statutory grounds. At a meeting of counsel in chambers on October 4, 1971, counsel for the defendant represented that the challenged temporary regulation was to be withdrawn.

Following this meeting, the Commissioner, on October 5, 1971, published in the Connecticut Law Journal the following statement:

"The notice of intent to adopt regulations pertaining to the payment for certain non-recurrent special needs of beneficiaries of Aid to Families with Dependent Children, published in the Connecticut Law Journal of August 24, 1971, is withdrawn."

Both counsel for the plaintiffs and the court assumed, therefore, that the controversy with respect to the temporary regulation of August 16 was ended.

The matter did not, however, end here. While the Commissioner withdrew the "notice of intent to adopt regulations," he did not in fact rescind the policy and temporary regulation of August 16. To the contrary, on October 5, the Commissioner issued Departmental Bulletin No. 2743, which provided that the temporary regulation of August 16 would continue in force until October 31, 1971, and at that time be superseded by the FAP in full, which was scheduled to go into effect on November 1, 1971. As noted earlier, the method of payment for the affected group of special needs under the FAP, proposed Welfare Regulations § 17-2-26 and § 17-2-27, is precisely the same as that of the August 16 regulation, § 364, except for the 15% reduction in the level of payments. The policy announced on August 16, as reaffirmed on October 5, has been continued in operation as a

piece-meal application of the FAP. Many of the defects claimed by the plaintiffs against the FAP, which were the basis for the preliminary injunction of October 28, 1971, of course lie also in the policy of August 16: the plaintiffs have claimed that certain special needs hitherto recognized and paid by the Welfare Department were neither included in this partial flat grant nor continue to be paid as needed.^{1/} Relying on the representation of counsel for the defendant and on the published withdrawal notice of October 5, the court had no reason to believe that as of October 28, the date of the preliminary injunction, the FAP did not remain entirely prospective. Only after the injunction was issued did the court learn that an important part of the FAP had indeed been already implemented, albeit under the guise of the earlier temporary regulation § 364.

Although the preliminary injunction did not deal specifically with the temporary regulation of August 16 concerning special needs, it clearly enjoined the Commissioner from implementing any part of the FAP. It may be that the Commissioner could have successfully met the challenge to the method of computing the average cost of the limited

^{1/}

The challenge to § 364 in the original complaint was not specifically pursued, after the notice of withdrawal was published on October 5. An amended complaint was filed by the plaintiffs on October 15, 1971, which challenged the FAP on several grounds, including a renewed attack on the method of paying for special needs.

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-5-

group of special needs embraced by § 364, and thus secured an exemption from the reach of the injunction so as to permit the payments for such needs by a flat grant. But the Commissioner has not sought such an exemption.^{2/} Whether the method of payment for special needs in the FAP improperly eliminates certain special needs formerly recognized is one important question to be decided in this case and was one of the considerations for the granting of the preliminary injunction.

Under these circumstances, I hold the Commissioner is acting in violation of the preliminary injunction of October 28, 1971. It is, therefore, ordered that payment of special needs under the policy of August 16, § 364, be discontinued and the previous method of paying special needs as they arise, which was in effect prior to August 16, 1971, be reinstated, pending the resolution of the merits of this con-

^{2/}

Plaintiffs have alleged furthermore that the only special needs being now paid outside the partial flat grant of § 364 are those limited needs recognized by proposed § 17-2-28 of the FAP. Statements in the deposition of Caroline Packard, Chief of Welfare Services for the Public Assistance Unit of the Welfare Department, seem to support this interpretation of current policy. In § 17-2-28, which is one of three proposed regulations setting forth the FAP, and which was specifically enjoined on October 28, it is provided that the Commissioner "may pay toward the costs of" certain special needs outside the flat grant as they arise. The Attorney General has denied that this section is being applied as current policy and maintains that all special needs outside the § 364 flat grant are paid as they were prior to August 16, on an as needed basis at 100% of cost. The court does not here rule on the issues of this collateral dispute.

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUTH JOHNSON, et al,

Plaintiffs,

V.

HENRY C. WHITE,

Defendant.

CIVIL NO. 14,620

NOTICE OF HEARING

To: William H. Clendenen, Jr.
David M. Lesser
Stuart Bear
265 Church Street. Rm. 808
New Haven, Conn. 06510

Douglas Crockett
796 Main Street
Willimantic, Conn. 06226

Attorneys for the Plaintiffs.

Please take notice that the defendant will bring the attached Motion to Modify Preliminary Injunction before the United States District Court for the District of Connecticut at Hartford on May 8, 1972 at 10:00 A.M. or as soon thereafter as counsel can be heard.

Francis J. MacGregor
Attorney for the Defendant
Francis J. MacGregor
Assistant Attorney General
76 Meadow Street
East Hartford, Conn. 06108
Tel. 289-9522

44a

I hereby certify that on the 3d day of May 1972, I served a copy of the Notice of Hearing on the following:

William H. Clendenen, Jr., David M. Lesser, Stuart Bear,
Attorneys at Law, 265 Church St., Room 808, New Haven,
Conn. 06510 and Douglas Crockett, Esquire, 796 Main St.,
Willimantic, Conn. 06226.

Francis J. MacGregor
Attorney for the Defendant

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUTH JOHNSON, et al,

Plaintiffs

V.

HENRY C. WHITE,

Defendant

CIVIL NO. 14,620

MOTION TO MODIFY PRELIMINARY INJUNCTION

The defendant moves to modify the preliminary injunction dated October 28, 1971 on the following grounds.

1. The defendant has satisfied the Department of Health, Education and Welfare with his proposed flat grant program and the court has a copy of HEW's brief showing this approval.

2. The defendant is willing to have the level of benefits equal the standard of need and will continue to do so barring unforeseen circumstances, and

3. The defendant is willing to make any adjustments to its standard of need which this court finds necessary and will do so within 60 days of any final judgment of the court. It will be implicit in this adjustment of the standard that the defendant

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may then have to cut the level of benefits down to equal the standard of need as in Appendix 4 of the HEW brief.

4. The harm to the plaintiffs, caused by a dissolving of this temporary injunction is remote but to continue under the temporary injunction is causing a continued waste of a finite amount of money.

FRANCIS J. MAC GREGOR
Attorney for the Defendant

Francis J. MacGregor
Assistant Attorney General
76 Meadow Street
East Hartford, Conn. 06108
Tel. 289-9522

I hereby certify that on the 3d day of May 1972, I served a copy of the Motion to Modify Preliminary Injunction on the following:

William H. Clendenen, Jr., David M. Lesser, Stuart Bear,
Attorneys at Law, 265 Church St., Room 208, New Haven,
Conn. 06510 and Douglas Crockett, Esquire, 796 Main St.,
Willimantic, Conn. 06226.

Francis J. MacGregor
Attorney for the Defendant

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JOHNSON v. WHITE

Cite as 353 F.Supp. 60 (1972)

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19, U.S.C.A. The three-judge court, through Judge Miller, wrote, 107 F. Supp. 544: "Under the well settled rule, if the case can be disposed of on the non-constitutional issue without a ruling on the constitutional issue involved, a ruling on the constitutional issue should be avoided." The following cases were cited for this statement: Spector Motor Service v. McLaughlin, 323 U.S. 101, 105, 65 S.Ct. 152, 80 L.Ed. 101; Alma Motor Co. v. Timken-Detroit Axle Co., 329 U.S. 129, 136, 67 S.Ct. 231, 91 L.Ed. 128; Rescue Army v. Municipal Court, 331 U.S. 549, 568-575, 67 S.Ct. 1409, 91 L.Ed. 1666. The opinion proceeded: "The rule appears well settled that where a statute provides for an administrative remedy a party is not entitled to injunctive relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. (Citing cases.) The rule is applicable in the present case even though the plaintiffs' constitutional rights are alleged to be violated. (Citing cases.) * * Plaintiffs' rights are thus fully protected by the administrative procedure provided by the Act, and they should be required to pursue that remedy instead of seeking injunctive relief through the pending actions." Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 58 S.Ct. 459, 82 L.Ed. 638; and Macauley v. Waterman S. S. Corp., 327 U.S. 540, 66 S.Ct. 712, 90 L.Ed. 839, were cited as authority for the last-stated proposition.

We think the foregoing reasoning is sound and well supported by the decisions."

The Rice case, supra, in the opinion of the Court, covers petitioners' claims "like a blanket". This being so, there is no need to consider or discuss petitioners' other contentions.

Accordingly, defendant's Motion to Dismiss is granted.

Ruth JOHNSON et al.

v.

Henry C. WHITE, Individually, and as
Commissioner of Welfare, State
of Connecticut.
Civ. No. 14620.

United States District Court,
D. Connecticut.
June 12, 1972.

Action by welfare recipients against state commissioner of welfare to challenge proposed action of the commissioner in converting AFDC program to a "flat grant" system in order to simplify AFDC payments by averaging budgeted needs of each size of assistance unit and by making identical payments to every family within each size of assistance unit on basis of this consolidated standard of need. The District Court, Blumfeld, Chief Judge, held, inter alia, although averaging of needs of those assistance units in which number of recipients equals number of persons living in household and of those assistance units in which welfare recipients live in a household with person not eligible for AFDC assistance would have a significant impact on former units, such averaging was not impermissible under statute requiring states to adjust amounts used to determine needs to reflect change in living costs and to proportionately adjust maximum AFDC being paid.

Judgment for defendant with exception.

1. Social Security and Public Welfare
194

Sampling technique, which was employed by state commissioner of welfare in proposing to convert AFDC program to a "flat grant" system to simplify AFDC payments by averaging budgeted needs of each size of assistance unit and by making identical payments to every family within each size of assistance

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unit on basis of this consolidated standard of need, was adequate. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

2. Social Security and Public Welfare

⇒194

Although averaging of needs of those assistance units in which number of recipients equals number of persons living in household and of those assistance units in which welfare recipients live in a household with person not eligible for AFDC assistance would have a significant impact on former units, such averaging was not impermissible under statute requiring states to adjust amounts used to determine needs to reflect change in living costs and to proportionately adjust maximum AFDC aid paid. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

3. Social Security and Public Welfare

⇒194

State commissioner of welfare, in proposing to convert AFDC program to a "flat grant" system to simplify AFDC payments by averaging budgeted needs of each size of assistance unit and by making identical payments to every family within each size of assistance unit on basis of this consolidated standard of need, could properly average cost of special needs across entire recipient population, notwithstanding contention that averaging of special need expenditures was an inequitable averaging of statistically distinct populations. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

4. Social Security and Public Welfare

⇒194

In converting AFDC program to a "flat grant" system in order to simplify AFDC payments by averaging budgeted needs of each size of assistance unit and by making identical payments to every family within each size of assistance unit on basis of this consolidated standard of need, it was permissible, under circumstances, for state commissioner of welfare to average, for assistance unit sizes 10 through 15, the costs of shelter, excess utilities, recurrent and nonrecur-

rent needs. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

5. Social Security and Public Welfare

⇒194

State commissioner of welfare, in proposing to convert AFDC program to a "flat grant" system in order to simplify AFDC payments by averaging budgeted needs of each size of assistance unit and by making identical payments to every family within each size of assistance unit on basis of this consolidated standard of need, did not obscure standard of need for rent by averaging budgeted rent allowances for certain classes of recipients. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

6. Social Security and Public Welfare

⇒194

State commissioner of welfare, in proposing to convert AFDC program to a "flat grant" system in order to simplify AFDC payments by averaging budgeted needs of each size of assistance unit and by making identical payments to every family within each size of assistance unit on basis of this consolidated standard of need, was not guilty of obscuring standard of need for special needs and supplemental clothing allowances by averaging payments for these items rather than true needs where recipients reside with nonrecipients. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

7. Social Security and Public Welfare

⇒194

In converting AFDC program to a "flat grant" system in order to simplify AFDC payments by averaging budgeted needs of each size of assistance unit and by making identical payments to every family within each size of assistance unit on basis of this consolidated standard of need, it was permissible for state commissioner of welfare to include in average of budgeted shelter needs those assistance units who had no need for a shelter allowance. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

8. Social Security and Public Welfare

⇒194

Proposed action of state commissioner of welfare, in converting AFDC pro-

Act, § 402
(23).

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602(a)(23).

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gram to a "flat grant" system, was not subject to objection that standard of need excluded or included only on a restricted basis certain special items of clothing which were a part of standard of need in state on effective date of statute requiring state to adjust amounts used to determine needs to reflect change in living costs and to proportionately adjust maximum AFDC being paid. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

9. Social Security and Public Welfare

⌞194

With respect to proposed action of state commissioner of welfare in converting AFDC program to a "flat grant" system, claim that in January 1968 recipients were granted telephone allowances for reasons other than medical need, rural isolation or employment, and that these allowances were discontinued prior to the survey period was de minimis in that inclusion of these additional allowances in standard of need would have very little effect on the standard. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

10. Social Security and Public Welfare

⌞194

Proposed action of state commissioner of welfare, in converting AFDC program to a "flat grant" system, was not subject to objection that since state welfare department had previously recognized in standard of need, as expenses incidental to employment, cost of lunches at rate of 75¢ daily and cost of transportation to and from work, elimination of these allowances impermissibly lowered the standard of need. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

11. Social Security and Public Welfare

⌞194

With respect to proposed action of state commissioner of welfare in converting AFDC program to a "flat grant" system, failure to include in standard of need allowances for lost or stolen cash did not violate statute requiring states to adjust amounts used to determine needs to reflect change of living costs

and to proportionately adjust maximum AFDC being paid. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

12. Social Security and Public Welfare

⌞194

Proposed action of state commissioner of welfare, in converting AFDC program to a "flat grant" system, was not subject to objection that allowances for a practical nurse and for hearing aid maintenance had been excluded from standard of need. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

13. Social Security and Public Welfare

⌞194

Under statute requiring states to adjust amounts used to determine needs to reflect change in living costs and to proportionately adjust the maximum AFDC being paid, limit of state's responsibility, with respect to items which it failed to update before July 1, 1969, is to bring them up to standard of July 1, 1969, and other items, which were updated after January 2, 1968, and before July 1, 1969, need not be repriced. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

14. Social Security and Public Welfare

⌞194

Under statute requiring states to adjust amounts used to determine needs to reflect change in living costs and to proportionately adjust maximum AFDC being paid, and in view of expert opinion of HEW, the state commissioner of welfare did not err in updating items on basis of national urban consumer price index, as opposed to a regional consumer price index. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

15. Social Security and Public Welfare

⌞194

Under statute requiring states to adjust amounts used to determine needs to reflect change in living costs and to proportionately adjust maximum AFDC being paid, state welfare commissioner's update of private housing maximum rental allowance in March 1970, from 1962 figure of \$125 to July 1969 figure of \$160 per month, an increase of 27.5%, based on urban average consumer price

index, was not inadequate, in view of review and acceptance of this update by HEW, and in view of rental survey undertaken by the commissioner which demonstrated that budgeted rents met actual cost of rent in more than 98% of cases. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

16. Social Security and Public Welfare
 ⇨194

Proposed action of state commissioner of welfare, in converting AFDC program to a "flat grant" system, was not subject to objection that the commissioner insufficiently updated public housing area maximums, upon which standards for public rental housing were based, in some areas of the state. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

17. Social Security and Public Welfare
 ⇨194

Proposed action of state commissioner of welfare, in converting AFDC program to a "flat grant" system, was not subject to objection that because of higher rent costs in a certain county the commissioner must raise standard of need for rents in that particular geographical area, where there was no showing that welfare recipients in that county were inadequately represented in survey of sample cases, and the commissioner had fairly averaged needs of recipients for rent across state to determine standard of need. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

18. Social Security and Public Welfare
 ⇨194

With respect to proposed action of state commissioner of welfare in converting AFDC program to a "flat grant" system, survey employed by the commissioner was not invalid because of exclusion from AFDC universe of about 3000 families who had been impermissibly removed from AFDC rolls because of an error by welfare department, where there was no showing that standard of need of these AFDC families was higher than for population of AFDC recipients as a whole. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

19. Social Security and Public Welfare
 ⇨194

With respect to proposed action of state commissioner of welfare in converting AFDC program to a "flat grant" system, plaintiffs' contention that a number of items, which were presently available to recipients and would not be included in flat grant, would be available only on terms which were more restrictive than at present, with resulting reduction in standard of need, was premature, in absence of specific instances of deprivation of special needs because of "restricted availability." Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

20. Social Security and Public Welfare
 ⇨194

Under statute requiring states to adjust amounts used to determine needs to reflect change in living costs and to proportionately adjust maximum AFDC being paid, maximum shelter allowance for AFDC children living with nonneedy, nonlegally liable supervising relatives were not insufficiently updated, where maximum was updated by 27.5%; and where maximums appeared to have received no update, state welfare commissioner would be ordered to update these maximums by 27.5% on penalty of withdrawal of federal funds for AFDC program. Social Security Act, § 402(a)(23), 42 U.S.C.A. § 602(a)(23).

William H. Clendenen, Jr., David M. Lesser, New Haven, Conn., for plaintiffs.

Francis J. MacGregor, Asst. Atty. Gen., East Hartford, Conn., for defendant.

**RULING ON DEFENDANT'S MOTION
 TO TERMINATE THE PRELIMINARY
 INJUNCTION and MEMO-
 RANDUM OF DECISION, FIND-
 INGS OF FACT and CONCLU-
 SIONS OF LAW**

I.

BLUMENFELD, Chief Judge.

This controversy between the plaintiffs, welfare recipients under Aid to

Families with Dependent Children (AFDC), and the defendant, the Commissioner of Welfare of the State of Connecticut, arose when the defendant proposed to convert virtually the entire AFDC program to a "flat grant" system, effective November 1, 1971. The proposed system, entitled the Connecticut Family Assistance Plan (CFAP), was designed to simplify AFDC payments by averaging the budgeted needs of each size of assistance unit and by making identical payments to every family within each size of assistance unit on the basis of this consolidated standard of need. Under the terms of the CFAP as originally proposed, not only were the needs of recipients to be averaged, but also payments were to be made at the rate of 85% of actual need. This represented a 15% reduction in the level of benefits, since Connecticut purported to meet 100% of the needs of eligible individuals prior to the CFAP.

The plaintiffs instituted this suit on behalf of all AFDC recipients to challenge the CFAP on two grounds: first, they claimed that the 15% reduction in the level of benefits to AFDC recipients was a denial of equal protection in violation of the fourteenth amendment, since other welfare programs were not to be subjected to similar reductions; and second, they claimed that the CFAP violated § 402(a)(23) of the Social Security Act, 42 U.S.C. § 602(a)(23), in that the defendant had improperly computed the standard of need in devising the CFAP.¹

The plaintiffs' constitutional claim which on the recent authority of *Jefferson v. Hackney*, 406 U.S. 535, 92 S.Ct.

1724, 32 L.Ed.2d 285 (1972), is without merit, was never pressed in this court. For this reason, a three-judge district court was not convened; a single judge is sufficient to decide the merits of the pending federal statutory claim. See *Rosado v. Wyman*, 397 U.S. 397, 401-405, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); cf. *Swift & Co. v. Wickham*, 382 U.S. 111, 86 S.Ct. 258, 15 L.Ed.2d 194 (1965). Jurisdiction, on the basis of the plaintiffs' claim of a denial of equal protection, was properly laid under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3).

On the basis of the plaintiffs' showing of irreparable injury, and arguable questions on the merits, a preliminary injunction was entered on October 28, 1971, enjoining the defendant from implementing the CFAP pending the decision of this case on the merits of the statutory claim. Subsequently, this court invited the participation of the Department of Health, Education & Welfare (HEW) as *amicus curiae* to obtain the opinion of HEW as to whether the proposed CFAP complied with the requirements of 42 U.S.C. § 602(a)(23). HEW thereafter undertook a massive review of the several factors involved in the proposed CFAP, and as a result of its criticisms the defendant incorporated many changes suggested by HEW with respect to the proper updating of the standard of need for particular items. The CFAP, so revised, has been approved by HEW, as set forth in its lengthy brief, filed April 3, 1972.

In the final stages of this extensive undertaking,² the defendant dropped his

1. The original complaint in this case, filed September 13, 1971, challenged proposed welfare regulations which would have partially instituted flat grants only for special needs and shelter allowances. These regulations were withdrawn on October 5, 1971, but their substance was incorporated in the CFAP. The complaint was amended on October 15, 1971, to challenge the full CFAP on the grounds set forth above. The defendant's subsequent attempt to implement the regulation concerning only special needs was the subject of a later motion for contempt in this

case. See Memorandum of Decision on Plaintiffs' Motion for Contempt, filed December 7, 1971.

2. As will be seen *infra*, the plaintiffs directed a large number of specific challenges to many different aspects of the defendant's proposed system of making flat grant payments to AFDC beneficiaries. Consideration of these required examination and analysis of voluminous records maintained by the defendant and of the data underlying them. Their validity and the methods in which they were

proposal of a ratable reduction in the level of benefits, so that the defendant will continue the level of payments to recipients at 100% of need. Thus, the plaintiffs' non-meritorious constitutional claim of a denial of equal protection because of the selective reduction in the level of benefits is also now moot. Despite the changes which have been made by the defendant, the plaintiffs continue to press their claim that the standard of need has been improperly computed. Since the parties and the court have "invested substantial time" and energy in the resolution of the pendent claim under federal statute, the court in its discretion will proceed to the merits of this claim. *Rosado v. Wyman, supra*, 397 U.S. at 404 n. 4, 90 S.Ct. 1207. Although the case is presently before the court on the defendant's motion to terminate the preliminary injunction, the scope of the evidence presented at the hearing on that motion, covering every remaining issue in the case, makes it appropriate for the court to proceed to a final judgment on the merits.

II.

Title 42 U.S.C. § 602(a)(23) requires that states administering categorical welfare assistance programs employing federal funds

"provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

According to the Supreme Court:

"two broad purposes may be ascribed to § 402(a)(23) (42 U.S.C. § 602(a)(23)): First, to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to

used by the defendant in setting up the flat grant system were called into ques-

apportion their payments on a more equitable basis. Consistent with this interpretation of § 402(a)(23), a State may, after recomputing its standard of need, pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the *actual* standard of need." *Rosado v. Wyman, supra*, 397 U.S. at 412-413, 90 S.Ct. at 1218.

In *Rosado*, the Court held that a state need not tailor each recipient's welfare payment to his particular needs, but could "consolidate items on the basis of statistical averages . . . (p)roviding all factors in the old equation are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging" *Id.* at 419, 90 S.Ct. at 1221.

The court is concerned here only with these two elements: the adequacy of the standard of need as reflected in the CFAP and the statistical method of averaging employed by the the state to reach that standard. The adequacy of a proposed payment in any individual case is not at issue, and the court recognizes that any program under which needs are averaged and payments made on a "flat grant" basis will inevitably lower the payments made to some individuals while raising payments to others. The defendant has represented to the court that the payments to about 9000 assistance units will be lowered, while about 20,000 assistance units will receive higher payments under the CFAP. Estimated annual cost of the AFDC program under the CFAP is about \$4.5 million greater than the cost of the AFDC program as presently administered, assuming that payments continue to be made at 100% of need. Cf. *Rosado, supra*, where New York's "consolidation" of special needs had the effect of reducing the cost of its AFDC program by about \$40 million.

To prepare the CFAP, the defendant randomly selected a sample of 3079 as-

tion by the plaintiffs through their industrious and dedicated counsel.

sistance units from the total, at the time of the survey, of about 27,000 assistance units in the AFDC program. The recurrent monthly benefits paid for the month of May 1971 and non-recurrent benefits for the preceding year were transcribed and processed by computer to produce monthly and yearly averages for the component factors of need for each assistance unit size. Upon review by HEW, the defendant updated certain of the components to reflect changes in the cost of living, as more fully discussed *infra*.

[1] The defendant adopted a pre-sample confidence interval of 95%, plus or minus 10%; and a post-sample check determined that the selected level of confidence had in fact been met. The defendant's sampling technique was approved by HEW. The plaintiffs claim that in certain components of need for certain assistance unit sizes, the sample size was too small to guarantee the selected level of confidence. The defendant's confidence level, however, was for the average of budgeted needs as a whole, rather than for each component in the standard of need. Giving due weight to the expert opinion of HEW, the court finds that the defendant's sampling technique was adequate.

III.

Statistically Distinct Populations

The court first considers that aspect of the CFAP which will have the greatest impact on recipients. As proposed, the CFAP represents an averaging of the cost of virtually all the needs³ of each recipient unit, based on the number of persons in each unit. Thus, the flat grant to each assistance unit containing three persons, for example, will be the same.

The plaintiffs have shown that there are two basic types of assistance unit: those units in which the number of recipients equals the number of persons

living in the household (hereinafter "equal assistance units") and those units in which the welfare recipients live in a household with persons not eligible for AFDC assistance (hereinafter "unequal assistance units"). An example of the equal assistance unit is a mother and two children living alone. A typical example of the unequal assistance unit is where three children live with their mother and stepfather, and the adults are ineligible for AFDC benefits. Each of these examples is an assistance unit of three. The plaintiffs have shown, however, that the average budgeted needs of equal assistance units are substantially higher than the average budgeted needs of unequal assistance units. For assistance units of three for example the average need of an unequal assistance unit is about \$50 per month less than that of an equal assistance unit; that is, according to the defendant's figures for budgeted needs, three recipients living with others need about \$50 per month less than three recipients living alone. Thus, when the needs of these two types of assistance units are combined in a weighted average, the resulting figure represents a reduction of the average need of the equal assistance unit and an increase for the unequal assistance unit.

The plaintiffs claim that this averaging of allegedly "statistically distinct populations" is impermissible under § 602(a)(23) and *Rosado, supra*, arguing that the defendant in effect is lumping apples with oranges. The plaintiffs contend that the defendant thereby obscures the standard of need for the equal assistance unit.

[2] While the averaging of the needs of equal and unequal assistance units will certainly have a significant impact on equal assistance units, the court cannot hold that such averaging is impermissible under § 602(a)(23). In *Rosado, supra*, New York had proposed to convert its previous method, of paying for special

3. Certain special needs will continue to be paid outside the flat grant, as more fully discussed *infra*.

needs on an individual basis, to a periodic flat grant to each assistance unit, which would also cover special needs. The Court approved New York's method of averaging the cost of special needs.⁴ Under New York's proposed flat grant system, the cost of special needs was to be averaged across the entire recipient population, not simply across that subdivision of the population of recipients who received allowances for special needs. Thus, the two populations, those who had received special needs and those who had not, were to be merged in the average, with *every* recipient receiving a small allowance for special needs. The impact of this merging process would be severe on those who had formerly received special needs allowances, since that portion of the flat grant representing special needs would be the cost of special needs averaged among all recipients, rather than the average cost to that subdivision of recipients who had been found eligible for special needs.

The situation is similar here, as between equal and unequal assistance units. The equal assistance units will, on the average, receive less than they need, and the unequal assistance units will receive more. But the unequal and equal assistance units are not more "statistically distinct" than the recipient populations eligible and ineligible for special needs in *Rosado*. It is not in violation of § 602(a)(23) to average their needs.

[3] Despite *Rosado*, the plaintiffs also claim that the defendant may not average the cost of special needs across the entire recipient population, arguing that the averaging of special need expenditures is an inequitable averaging of statistically distinct populations. As discussed above, the averaging of the needs of these precise populations, those who

do and do not receive special needs, was approved by the Court in *Rosado*. Although the plaintiffs claim that this alleged defect was not brought to the Court's attention in *Rosado*, there is no reason to believe that the Court was unaware of the effect of averaging special needs across the entire recipient population. The court holds that the defendant may so average special needs here, consistent with § 602(a)(23).

The plaintiffs' final claim with respect to impermissible averaging of statistically distinct populations goes to the defendant's averaging of virtually all the needs of assistance unit sizes 10 through 15, except for food, clothing, personal incidentals and household supplies. That is, for assistance unit sizes 10 through 15, the defendant averaged the budgeted needs for shelter, excess utilities, recurrent and non-recurrent needs, so that the standard of need as established by the CFAP is, with respect to these items, the same for a family of 10 as for a family of 15. The plaintiffs allege that such an averaging obscures the standard of need for the larger families.⁵

There is no direct evidence that, because of economies of scale, the cost of the needs of larger families with respect to the particular items averaged tends to be the same; and the plaintiffs contend that, since the cost of these items increases with family size in assistance unit sizes 1 through 9, it may be expected to do so for the larger units as well.

The defendant's expert in charge of the averaging process, Richard Gertzof, testified that the small number of recipient families in the higher assistance units prompted the consolidation. For example, at the time of the survey, there was only one assistance unit size 15; and the budgeted needs of this unit, princi-

4. The Court also found in *Rosado* that New York had impermissibly lowered the standard of need, by excluding certain special needs which had previously been a part of the standard. See *Rosado v. Wyman*, *supra*, 397 U.S. at 415-419, 90 S.Ct. 1207.

5. The plaintiffs also challenge the reliability of the defendant's sample of these

larger assistance units. But the court has found that the defendant was not required to achieve 95% reliability for each component of the standard of need. See footnote 1, *supra*. Neither was he required to establish this level of confidence for each assistance unit size.

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pally because the family was living in public housing, were smaller than the average of assistance units 10 through 15, for consolidated items.

[4] The court holds that, in light of this problem as well as possible economies of scale at this level, it was permissible for the defendant to average, for assistance unit sizes 10 through 15, the costs of shelter, excess utilities, recurrent and non-recurrent needs. Since the averaging itself was fair, the standard of need for assistance units size 10 through 15 as a whole was not obscured, and the requirements of § 602(a)(23) were not violated. Cf. *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970).

IV.

Standard of Need for Rent

The plaintiffs' next major claim is that the defendant obscured the true standard of need for shelter allowances by basing the CFAP standard of need for rent on the budgeted needs of the assistance units surveyed.⁶ The plaintiffs' general claim here is that the amount budgeted by the defendant for rent, which was the basis for the CFAP average, did not meet the true cost of rent.

The defendant's policy has been to pay the rent as charged, where the recipients live in public housing. Where the recipients live in private housing, rent is budgeted on the basis of the cost of a comparable unit of public housing, plus 10%, up to a maximum of \$160 per month, with an additional 10% allowed for furnished housing. Beyond these standard allowances, the defendant allowed over-standard rents to be budgeted and paid in a sizable number of cases, constituting about 28% of the total case-load.

6. The plaintiffs' claim that the defendant inadequately updated the maximum rent allowance to reflect changes in the cost of living is considered *infra*.

7. In several cases budgeted rent fell short of actual rent, by an average of \$14, representing a total unmet need of \$98. Dis-

To determine the extent to which budgeted rents fell short of the actual cost for rent, the defendant undertook a separate housing survey, the results of which are contained in HEW Brief, App. 13. Out of 463 cases randomly selected, 115 families lived in public housing, and thus budgeted rent reflected actual cost. Out of the remaining 348 families living in private housing, 131 had over-standard budgeted rents. Most significant, in only 7 cases, or about 2%, did the budgeted rent fail to meet actual need. Of these cases, the actual rent averaged about \$14 per month higher than budgeted rent.

The court holds that, in view of this housing survey, the defendant's use of budgeted rent fairly reflected the actual needs of recipients. Although in 2% of the cases, the actual need was greater than the budgeted need, the court finds that this discrepancy is de minimis.⁷

The plaintiffs have raised additional questions, however, with respect to the maximums budgeted for rent in certain situations. Where AFDC children live with non-needy, non-legally liable relatives, shelter maximums are budgeted at the rate of \$20 per month for one child, \$30 per month for two children, and \$40 per month for three or more children. Connecticut Welfare Manual, Vol. 1 (hereinafter Manual), § 352 at 5. The defendant also defines actual need for these recipients at that rate; that is, there is no indication that, in the housing survey discussed above, the defendant inquired as to whether such recipients were actually charged more for rent. Indeed, it is hard to imagine that more for rent than the defendant allows could be exacted from such children, unless their supervising relatives give them less food or clothing. Similarly, where the assistance unit resides with a stepfather, the

tributing this sum over the entire sample of 463 cases, each recipient unit's rent allowance would be increased by 21 cents per month, assuming that the seven cases were evenly distributed according to family size.

shelter allowance is budgeted on the basis of a prorated share of actual rent, or a prorated share of the maximum rent standard for private housing in the community, whichever is less. Manual § 345.3 at 2. Where assistance units reside with legally liable relatives or non-legally liable relatives or friends, the shelter allowance is also determined in this way. Manual § 352 at 4. Ordinarily, the prorated share of the private housing standard is lower, and thus is the amount budgeted for rent. The plaintiffs contend that these maximums do not reflect actual need, and their use in the CFAP averages thus obscures the true standard of need for rent.

[5, 6] The plaintiffs, however, have offered no evidence that recipients in the categories described above are being charged more for rent than the prorated maximums budgeted by the defendant. Rather, the plaintiffs rely on the statement by the court in *Rosado v. Wyman*, 437 F.2d 619, 628 (2d Cir. 1970) (on remand from the Supreme Court), that the defendant, in consolidating welfare payments on the basis of statistical averages, has the "burden to justify the new schedules." But such justification, beyond revealing the basis of his statistical averages, is required only where the plaintiffs make some showing, as in *Rosado*, that the defendant has impermissibly lowered the standard of need. Cf. *Marotti v. White*, 342 F.Supp. 823 (D. Conn. 1972). The court holds that the defendant did not obscure the standard of need for rent by averaging the budgeted rent allowances for the classes of recipients described above.*

[7] The plaintiffs also claim that the standard of need for rent was obscured by the inclusion, in the survey sample, of assistance units whose rent was budgeted at zero, because their shelter need was met from another source. The plaintiffs contend that since all people need shelter, the standard of need is lowered imper-

missibly by taking into account those persons who receive shelter without cost to the defendant. But a fair averaging may take into account those who do not in fact have a need for a shelter payment, just as the cost of special needs may be averaged across the entire recipient population, including those recipients who do not require them. It was permissible for the defendant to include in the average of budgeted shelter needs those assistance units who had no need for a shelter allowance. The plaintiffs do not claim that the sample included a disproportionate number of zero budgeted rents.

V.

Items Omitted From CFAP

[8] The plaintiffs contend that the standard of need represented by the CFAP excludes or includes only on a restricted basis certain items which were a part of the standard of need in Connecticut on the effective date of § 602(a) (23), January 2, 1968. The plaintiffs' major claim here goes to certain allowances for special items of clothing, such as oversize and promotional clothing, the availability of which was allegedly restricted by Departmental Bulletin No. 2226, issued on January 22, 1969. These formerly available items, the plaintiffs argue, were thus not included in the CFAP sample year of June 1970 to May 1971, and hence not included in the standard of need.

The defendant has explained the January 22, 1969, policy change as follows:

"(E)very AFDC recipient adult, school child and preschool child was brought up to standard and given all the clothing necessary to maintain a standard of health and decency. After that time the only supplemental clothing payments that were made were (for) clothing to bring a family coming on AFDC up to standard, layettes, out-

supplemental clothing allowances by averaging payments for these items rather than true needs is without merit.

8. For the same reason, the plaintiffs' claim that where the recipients reside with non-recipients the defendant obscured the standard of need for special needs and

size clothing and replacement of clothing because of a catastrophic event such as fire." Defendant's Trial Brief at 10.

In reviewing the CFAP, HEW examined the 1969 policy change and concluded that clothing allowances were not restricted. Most persuasive, the defendant undertook a survey of clothing allowances before and after the 1969 policy change by comparing the average monthly amount expended per case by family size in 1967 with amounts expended during the CFAP survey period. The study revealed a much larger expenditure for each family size during the later period, when the 1969 policy was in effect. See HEW Brief, App. 17. The plaintiffs' claim is thus found by the court to be without merit, in that the standard of need for clothing was not reduced by the defendant by virtue of Departmental Bulletin No. 2226.

[9] The plaintiffs claim that in January 1968 recipients were granted telephone allowances for reasons other than medical need, rural isolation or employment, and that these allowances were discontinued prior to the survey period. Since the total telephone expenses during the CFAP survey period averaged about \$1.00 per month per assistance unit, and since the evidence indicates that relatively few telephone allowances were formerly granted for reasons other than medical need, rural isolation or employment, the inclusion of these additional allowances in the standard of need would have very little effect on the standard. The court, therefore, finds this claim de minimis and it is dismissed.

[10] The plaintiffs also claim that since the Connecticut Welfare Department in January 1968 recognized in the standard of need, as expenses incident to employment, the cost of lunches at the rate of 75 cents daily and the cost of transportation to and from work, the elimination of these allowances in January 1969, Manual § 332.32, impermissibly lowered the standard of need. HEW states that

"The State's new policy concerning this item (§ 332.32) . . . is currently pending before HEW since the item was the basis for one of the issues of the Conformity Hearing." HEW Brief at 18.

See Connecticut State Dept. of Public Welfare v. Department of Health, Educ. & Welfare, 448 F.2d 209 (2d Cir. 1971).

These expenses, however, are relevant only to the determination of eligibility for assistance and of work-related expenses; their allowance by the defendant, while it would render more persons eligible for assistance and increase the work-related expenses for working recipients, would not be reflected by an increase in the CFAP standard of need, as based on the budgeted needs of recipients. This claim is, therefore, without merit with respect to the flat grant system in issue in this proceeding.

[11] The plaintiffs also claim that allowances for lost or stolen cash, available in January 1968, were eliminated in September 1969, Manual § 384, thereby reducing the standard of need. In *Rosado v. Wyman*, 322 F.Supp. 1173, 1186-1187 (E.D.N.Y.1970), Judge Weinstein concluded that certain items, including allowances for lost or stolen cash, need not be included in the standard of need, on the basis of the "expert knowledge" of HEW. Although HEW has not taken a position with respect to allowances for lost or stolen cash in its brief in this case, the court concludes that the failure to include in the standard of need under the CFAP this contribution to a reserve fund against such possible losses does not violate the statute.

The plaintiffs claim that allowances for water rent and fees for a conservator or guardian, which were available during the survey period, were not included in the CFAP average. Counsel for the defendant has stated that water rent was always included in shelter allowances and was paid separately only where the recipient owned his own home. Water rent allowances were thus included in the CFAP survey, and the claim is without

merit. Counsel for the defendant has represented that fees for a conservator or guardian will continue to be paid under proposed Manual § 5030, as needed, outside the flat grant. Although Manual § 5030 does not appear to contain a provision for the payment of fees for a conservator or guardian, the court will accept the representation of the defendant's counsel with respect to such payments under Manual § 5030.

[12] The plaintiffs also complain that allowances for a practical nurse and for hearing aid maintenance have been excluded from the standard of need in the CFAP. The defendant has represented that these items will continue to be available under Title XIX medical coverage, for which all AFDC recipients are eligible. Although removal of these items from the method of direct payment under AFDC might technically be considered a diminution of the standard of need, in practical effect the items will still be available, according to the defendant. The claim is thus without merit.

VI.

Insufficient Updating

[13] The plaintiff complains that the defendant has insufficiently updated a number of items to reflect changes in the cost of living. Under § 602(a)(23), states which had not updated the components of the standard of need between January 2, 1968, and July 1, 1969, are required to update to reflect changes in the cost of the component to July 1, 1969. The plaintiffs argue that if the state failed to update *any* item by July 1, 1969, *all* the components of the standard of need must be updated to July 1, 1969. Cf. Plaintiffs' Exhibit MM, Nebraska Conformity Hearing, January 18, 1971. This argument is unpersuasive. The limit of the state's responsibility, with respect to items which it failed to update before July 1, 1969, is to bring them up to the standard of July 1, 1969. Other items, which were updated after January 2, 1968, and before July 1, 1969, need not be repriced. HEW sup-

ports this interpretation of the statute. HEW Brief at 5.

[14] The plaintiffs also claim that the defendant erred in updating items on the basis of the National Consumer Price Index, United States Urban Average. The plaintiffs contend that the defendant should have used the regional Consumer Price Index (CPI) for New York City or Boston, as more reflective of costs in Connecticut. The defendant, in updating, employed cost study method B, provided in HEW State Letter of October 17, 1969, which requires use of "the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, for the appropriate region" HEW Brief, App. 5, at 2. HEW supports the defendant's position that this regional index requirement does not apply to Connecticut, since Connecticut does not contain one of the 23 Standard Metropolitan Statistical areas for which there are individual city indexes; in such circumstances, the United States City Average CPI will suffice. Relying on the expert opinion of HEW, the court holds that the use of the national urban average CPI was sufficient, and that the plaintiffs' claim is without merit.

[15] The plaintiffs contend that the defendant's update of the private housing maximum rental allowance in March 1970, from the 1962 figure of \$125 to the July 1969 figure of \$160 per month, an increase of 27.5% based on the urban average CPI, was inadequate. The plaintiffs contend that, based on the testimony of employees of the defendant, rents in Connecticut rose by more than 40% from 1962 to 1969. In view of the review and acceptance of this update of 27.5% by HEW, and in view of the rental survey undertaken by the defendant and discussed *supra*, HEW Brief, App. 13, which demonstrated that budgeted rents met the actual cost of rent in more than 98% of the cases, the court finds that the update of 27.5% was adequate.

[16] The plaintiffs also complain that the defendant insufficiently updated the public housing area maximums, upon which the standards for public rental

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housing were based, in some areas of the state. Based on HEW's acceptance of the updates and on the defendant's survey comparing budgeted with actual rents, HEW Brief, App. 13, the court finds that the updates were adequate. The plaintiffs' claim that the consolidated average for shelter costs impermissibly lowered the maximum rents in some areas is without merit. Any averaging process has the effect of lowering the higher allowances. Similarly, the plaintiffs' claim that the CFAP shelter component must be voided because the previous policy of setting different rates for private housing based on the local public housing rates was not a uniform statewide standard, see *Boddie v. Wyman*, 434 F.2d 1207 (2d Cir. 1970), *aff'd*, 402 U.S. 991, 91 S.Ct. 2168, 29 L.Ed.2d 157 (1971), is without merit. The effect of the CFAP is to establish a uniform statewide standard; an intermediate step of first creating a uniform statewide standard before incorporation in the CFAP flat grant system is not required.

[17] The plaintiffs also make the claim, which at first appears to contradict their claim with respect to a statewide standard for rent, that because of higher rental costs in Fairfield County the defendant must raise the standard of need for rents in that particular geographic area. That is, the plaintiffs contend that *Boddie v. Wyman*, *supra*, 434 F.2d 1207, which held that New York could not set different standards of need for different areas in the state without a factual basis, stands for its opposite: that a state may not impose a uniform statewide standard of need where costs in fact vary across the state. The court finds this contention without merit. The plaintiffs do not contend that welfare recipients in Fairfield County were inadequately represented in the CFAP survey of sample cases. The defendant has fairly averaged the needs of recipients for rent across the state to determine the standard of need; he may apply that standard statewide. *Boddie v. Wyman*, *supra*.

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The plaintiffs also claim that the defendant erred in the updating of certain components of the allowance for food, clothing, personal incidentals and household supplies, as well as for certain special needs. On the basis of the review and significant updating of these items required by HEW, and the approval of the final results by HEW, the court finds that these items were sufficiently updated to satisfy the requirements of § 602(a)(23).

VII.

Exclusion of Certain Recipients

[18] The plaintiffs also claim that the CFAP survey is invalid because of the exclusion from the AFDC universe of about 3000 families who had been impermissibly removed from the AFDC rolls because of an error by the welfare department in calculating work-related expenses for purposes of determining eligibility. See *Campagnuolo v. White*, Civ. No. 13,968, Orders of the Court of June 30, 1971, and October 7, 1971 (D. Conn.). The plaintiffs have not shown, and employees of the defendant deny, that the standard of need for these AFDC families is higher than for the population of AFDC recipients as a whole. The plaintiffs' claim that the CFAP survey was skewed by their omission from the sample universe is, therefore, without merit.

VIII.

Items Restricted in Availability

In addition to their challenges to the adequacy of the averages which go to make up the standard of need in the flat grant portion of the CFAP, the plaintiffs also attack that part of the CFAP in which the defendant proposes to meet certain special needs of recipients as they occur, outside the flat grant and on an individualized basis. Proposed Manual § 5030. The plaintiffs contend that a number of items, which are now available to recipients and will not be included in the flat grant, will be available under Manual § 5030 only on terms

which are more restrictive than at present; the reduced availability of these items, the plaintiffs contend, represents a reduction in the standard of need.

The defendant does not contend that the previous allowances for these items were averaged in the CFAP survey, and thus contained in the flat grant. The items of allegedly restricted availability at issue under Manual § 5030 are as follows:

(1) Under the CFAP, Manual § 5030 at 11-12, payment for the care of a child outside the home, in either a foster home or the home of a relative, where the supervising relative is temporarily absent or incapable of caring for the child, will be limited to three months. Under the previous policy, Manual § 265.1, there was apparently no durational restriction. While a three month period for providing substitute care may be useful for internal administrative guidance, it cannot serve to terminate the obligation to provide for the care of the child.

(2) Under the CFAP, the cost of property repairs, up to a maximum of \$500, will be available under Manual § 5030 at 1-2, on a once-only basis. The previous policy contained neither the limit of \$500 nor the single-occasion limit. Manual § 364.4. No justification for this limitation has been furnished or suggested.

(3) Under the CFAP, furniture, furnishings, appliances and clothing, including sales tax thereon, will be replaced only when they have been damaged or destroyed by a catastrophic event, which is defined as a "natural disaster" which "arises suddenly." Manual § 5030 at 3-4. The plaintiffs claim that under the previous policy and practice, Manual § 364.1, Plaintiffs' Exhibits S, ZZ-20, and PP-11, 13 and 17 (Fair hearing decisions), these items were sometimes replaced for reasons other than a natural disaster, including when the items were lost, stolen, or otherwise destroyed. HEW, however, states that repair costs for furniture, household furnishings and

appliances were included in the CFAP averages and thus reflected in the standard of need. HEW Brief at 20.

(4) Under the CFAP, hotel accommodations, including the sales tax thereon, and restaurant meals will be allowed only where the recipient is forced to move because of a natural disaster or judgment of eviction. Manual § 5030 at 3-4. The plaintiffs claim that under previous policy, these items were also allowed if the recipient had a "need to relocate immediately due to an emergency situation." Manual §§ 352 at 7, 351.14.

(5) Under the CFAP, school expenses will be allowed to a maximum of \$12.50 per month. Previously, an allowance for school expenses was not provided by official departmental policy except as a \$10 deduction from the earnings of working recipients, Manual § 332.5A; but in practice, school expenses were sometimes allowed, apparently without monetary limit. Plaintiffs' Exhibit EE. The previous allowance of school expenses, although outside official departmental policy, brings such expenses within the standard of need. *Rosado v. Wyman*, *supra*, 322 F.Supp. at 1185. However, since it does not appear that school expenses were regularly granted on an extensive basis, the \$12.50 allowance under § 5030 appears satisfactorily to carry over this item under the CFAP. "(T)he extent to which it was recognized (previously) has been adequately carried over to the present" under the CFAP. *Rosado v. Wyman*, *id.* at 1185.

[19] It is unclear, however, that a rigid construction will be given to proposed Manual § 5030 by the defendant's employees in its administration. Much of the evidence upon which the plaintiffs rely to show that the availability of these items will be restricted under § 5030 consists of administrative examples⁹ of generous construction in the past of these regulations governing special needs. In the absence of specific instances of deprivation of special needs because of "restricted availability" un-

9. Fair hearing decisions and 52-T forms (needs budgeted by caseworkers' individual cases).

der § 5030, the court considers this group of claims to be premature. These claims are, therefore, dismissed as prematurely brought, without prejudice to their renewal in specific cases after the administrative contours of § 5030 have been established in practice.

A related claim made by the plaintiffs is that the effective date of assistance for a newborn child will be postponed under the CFAP, thereby lowering the standard of need. Under the previous policy, the effective date of the addition of a newborn child to the welfare rolls has been the date of birth. Manual § 371.1. Under the CFAP, "(w)hen a child is born . . . the assistance payment is increased effective the first of the month following the month of change." Proposed Manual § 5020 at 5. This restriction on the availability of assistance to newborn children will have the effect of reducing the standard of need, for all those who are not born on the last day of the month. It may be somewhat difficult administratively to adhere to the present system of determining the date of eligibility under the terms of Manual § 371.1; presumably, however, payments made on the basis of eligibility as of the 15th of the month of birth would be a permissible averaging. Since no one is presently in being to support a challenge to the proposed system of eligibility under § 5020, any ruling at this time would be premature.

IX.

Shelter Allowances for Children

[20] The plaintiffs claim that the maximum shelter allowances for AFDC children living with non-needy, non-legally liable supervising relatives were insufficiently updated. These maximums were budgeted at the rate of \$20 per month for one child, \$30 per month for two children, and \$40 per month for three or more children. Manual § 352 at 5. The \$20 maximum for one child was updated by 27.5%. This update was adequate. See part VII of this opinion, *supra*. The maximums for two or

more children appear to have received no update, in violation of § 602(a)(23). The defendant is thus ordered to update these maximums by 27.5% on penalty of the withdrawal of federal funds for the AFDC program. The effect of this update, increasing the shelter allowance component of the relevant assistance unit sizes, will be to enlarge the flat grant to some extent. Although there is not sufficient evidence before the court to permit application of the de minimis principle, it seems unlikely that the increase should result in a percentage reduction in the level of benefits.

X.

The court finds that the claimed deficiencies in the Connecticut Family Assistance Plan as originally proposed have been substantially remedied and that the plan as presently proposed complies with the requirements of 42 U.S.C. § 602(a)(23), with the minor exception noted above. The threat of irreparable injury to the plaintiffs has been eliminated. The court, therefore, orders that the preliminary injunction entered on October 28, 1971, against the implementation of the plan be now terminated.

It is further ordered that within a reasonable time from the date of this opinion, the defendant shall make the correction in the plan as set forth in part IX of this opinion.

The foregoing constitutes the court's findings of fact and conclusions of law. Fed.R.Civ.P. 52(a).

Except for the claims discussed in part VIII which are dismissed as prematurely brought, and the order against the defendant in part IX of this opinion, judgment may enter for the defendant, and it is SO ORDERED.

Each party shall bear its own costs.

The court wishes to commend the diligent efforts of counsel for the plaintiffs and the defendant, and to extend special thanks to counsel for HEW, whose labors as amicus curiae significantly aided the court in clarifying and resolving the numerous issues in this case.

MICROFILM

UNITED STATES DISTRICT COURT

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DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

RUTH JOHNSON, ET AL

v.

CIVIL NO. 14,620

HENRY C. WHITE, individually
and as Commissioner of Welfare
of the State of Connecticut

J U D G M E N T

This cause came on for hearing on defendant's Motion to Terminate the Preliminary Injunction and the Court having filed its Ruling on Defendant's Motion to Terminate the Preliminary Injunction and Memorandum of Decision, Findings of Fact and Conclusions of Law under date of June 12, 1972,

It is ORDERED and ADJUDGED that the Preliminary Injunction, entered on October 28, 1971, against the implementation of the plan be and is hereby terminated; and

It is FURTHER ORDERED and ADJUDGED that within a reasonable time from the date of the Court's Opinion (June 12, 1972) the defendant shall make the correction in the plan as set forth in Part IX of the said Opinion; and

It is FURTHER ORDERED and ADJUDGED that judgment be and is hereby entered in favor of the defendant, on the merits, each party to bear its own costs.

Dated at New Haven, Connecticut, this 15th day of Jun., 1972.

GILBERT C. EARL

Clerk, United States District Court.

By: *Francis J. Coniglio*
Deputy In Charge

APPROVED:

M. Joseph F. ...
CHIEF JUDGE, UNITED STATES DISTRICT COURT

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UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT
NEW HAVEN, CONN.

DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

RUTH JOHNSON, et. al.,

PLAINTIFFS,

VS.

HENRY C. WHITE, individually and as
Commissioner of Welfare of the
State of Connecticut,

DEFENDANT.

CIVIL NO. 14,620

MOTION TO REOPEN, SET ASIDE, ALTER AND AMEND JUDGMENT FOR RELIEF
FROM JUDGMENT, TO ALLOW FURTHER EVIDENCE AND ALLOW REARGUMENT,
FOR REHEARING AND FOR STAY OF THE EXECUTION OF JUDGMENT PENDING
DISPOSITION OF MOTION

Plaintiffs move pursuant to Rules 52, 59, 60 and 62, F.R.C.P.
to reopen, set aside, alter and amend judgment, for relief from
judgment, to allow further evidence and reargument, for rehearing
and for stay of execution pending disposition of motion and for
reasons state:

A. The Department of Health, Education and Welfare did not
have the opportunity to review and report to the court on several
by
claims made/the plaintiffs concerning the Defendant's CFAP. The
plaintiffs request the Court to solicit the position and reasons
underlying said position from D.H.E.W. on the following issues:

1. The 52T forms containing "0" rents (Plaintiffs pro-
posed exhibits 52T - 1) demonstrate that income is provided
to the assistance unit by an outside source, i.e., non-needy,
non-legally liable relative or a step-parent which is used by
the assistance unit to meet the shelter need. D.H.E.W. is

The motion is denied with respect to ruling on the motion has been deferred - and deferred - at the repeated requests of the parties who indicated that the matter was being handled by the motion was about 10 minutes ago. M.V.R. 4:07.

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NEW HAVEN, CONN.

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requested to answer whether this income to the assistance unit is to be treated as income under 42 U.S.C. §602(a)(7) and (a)(8) and 45 C.F.R. §233.

2. The Defendant averaged maximum shelter awards [i.e., \$20, \$30, \$40 per month (Manual §352 at 5)], along with actual shelter need payments. D.H.E.W. is requested to answer whether:

a) When creating a standard of need in compliance with 42 U.S.C. §602(a)(2), is it permissible to average maximums together with actual need payments?

b) If the answer to 2(a) is in the affirmative, is it permissible to average maximums and arrive at an amount that is lower than some of the maximums averaged?

c) If the answer to 2(b) is in the affirmative, is that a permissible reduction of a maximum?

3. The Defendant updated personal incidentals from October 1, 1967, to January 1, 1969. The amounts for personal incidentals for adults, children 13 and up and infants was unchanged from at least October 1, 1963 to 1967. The amounts for children 4 - 9 and 10 - 12 were combined in October 1, 1967. D.H.E.W. is requested to answer whether the personal incidentals amounts either in whole or in part must be updated from October 1, 1963.

4. The Defendant made several mathematical or ministerial errors in the updating of various amounts. The D.H.E.W. is requested to answer whether these errors are permissible. The errors are:

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a. update of public housing area maximums. See pp. 91-98, of Plaintiffs' Memorandum of Law, May 23, 1972.

b. Update of FCPH as a single standard. See pp. 99-102, Ibid.

c. Food. See pp. 102-103, Ibid.

d. Personal Incidentals. See 104-105, Ibid.

e. Transportation. See pp. 110 and 114, Ibid.

f. Essential Services Meal Standard, see 114, Ibid.

g. Fuel for Water Heating. See pp. 114-115, Ibid.

B. The Plaintiffs request permission to introduce additional evidence to demonstrate:

1. The assistance units with 0 rents had a need for shelter; and,

2. The costs of the needs of larger families with respect to shelter and certain non-recurrent needs increase in direct relation to family size; and,

3. That a significant number of recipients in the categories enumerated on pp. 14-and-15-of-the decision are being charged more for rent than the prorated maximums charged by the Defendant.

4. The cases where the actual need for rent was greater than the budgeted need for rent was greater than 2% of the caseload and that the discrepancy was not de minimis.

C. The amended and supplemented Findings of Fact and Conclusions of Law and requests for position from H.E.W. materially affect the judgment entered herein and require that the Judgment be reopened, set aside, altered and amended and that the Plaintiffs be relieved from the judgment and that the execution of the judgment be stayed pending the disposition of this motion.

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D. The foregoing requires the submission of further evidence, arguments and authorities and the Plaintiffs should be allowed to submit the same.

THE PLAINTIFFS

BY

William H. Clendenen, Jr.
David M. Lesser
Stuart Bear
265 Church Street #808
New Haven, Connecticut 06510
203-787-5861

Douglas M. Crockett
746 Main Street
P.O. Box "D"
Willimantic, Connecticut 06226
203-423-8425

ATTORNEYS FOR PLAINTIFFS

CERTIFICATION

This is to certify that a copy of the foregoing Motion was mailed postage prepaid to: _____

Francis J. MacGregor
Assistant Attorney General
76 Meadow Street
East Hartford, Connecticut 06108

Henry Cohn
Assistant United States Attorney
450 Main Street
Hartford, Connecticut 06103

Sam Fish
Regional Attorney
Department of Health, Education and Welfare
J.F.K. Building
Government Center
Boston, Massachusetts 02203

on this 23rd day of June, 1972.

William H. Clendenen, Jr.

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FEB 13 1975
NEW HAVEN

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Jan 6 3 20 PM '75
U.S. DISTRICT COURT
NEW HAVEN, CONN.

IN THE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

RUTH JOHNSON, et al.,
PLAINTIFFS,

VS.

HENRY C. WHITE, individually and as
Commissioner of Welfare of the
State of Connecticut,

DEFENDANT.

CIVIL NO. 14,620

me

MOTION TO AMEND AND SUPPLEMENT FINDINGS
OF FACT AND CONCLUSIONS OF LAW

Plaintiffs move, pursuant to Rule 52 F.R.C.P., the court to
amend and supplement its findings of fact and conclusions of law
heretofore filed in the following particulars:

1. Amend the Finding of Fact on page 7, i.e., "The Defend-
ant's confidence level, however, was for the average of budgeted
needs as a whole, rather than for each component in the standard
of need.", to read as follows:

The Defendant's confidence level was for the average budgeted
needs of each assistance unit size, rather than for each component
of budgeted needs in each assistance unit size.

2. Amend the Finding of Fact on page 11, i.e., "There is no
direct evidence that, because of economics of scale, the cost of
the needs of larger families with respect to the particular items
averaged tends to be the same;", to read as follows:

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Feb 10, 1975 M.V.B. WSD

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

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The policy of the Defendant recognized that the cost of the needs of larger families with respect to shelter and some non-recurrent needs, i.e., clothing, which comprise the largest dollar amounts of the items averaged, increase in direct relation to the family size;

3. Amend the Finding of Fact on page 15, i.e., "The Plaintiffs, however, have offered no evidence that recipients in the categories described above are being charged more for rent than the prorated maximums budgeted by the Defendant", to read as follows:

The plaintiffs introduced evidence that shows that some recipients in the categories described above are being charged more for rent than the prorated maximums budgeted by the Defendant.

4. Make the following additional Findings of Fact:

a. The H.E.W. review of CFAP was conducted without the direct participation of Plaintiffs or their counsel. The only parties to the review process were the Defendant and H.E.W.

b. The Defendant's computer expert, Richard Gertzof, has not produced and filed with the court the post-sample confidence interval check demonstrating that the selected level of confidence had in fact been met.

c. The Defendant's selected confidence interval of 95%, plus or minus 10% for each assistance unit size, was not attained for assistance units 12, 13, 14 and 15.

d. There were 33 "0" rents in assistance unit size 1; 12 "0" rents in assistance unit size 2; 20 "0" rents in assistance unit size 3; 9 "0" rents in assistance unit size 4;

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11 "0" rents in assistance unit size 5; 6 "0" rents in assistance unit size 6; 3 "0" rents in assistance unit size 7; 1 "0" rent in assistance unit size 8; 1 "0" rent in assistance unit size 9; no "0" rents in assistance unit sizes 10-15.

e. (1) In assistance unit size 1, the 33 "0" rent awards equaled 10.58% of the unequal assistance units.

(2) In assistance unit size 2, the 12 "0" rent awards equaled 6.98% of the unequal assistance units.

(3) In assistance unit size 3, the 20 "0" rent awards equaled 16.95% of the unequal assistance units.

(4) In assistance unit size 4, the 9 "0" rent awards equaled 9.68% of the unequal assistance units.

(5) In assistance unit size 5, the 11 "0" rent awards equaled 12.50% of the unequal assistance units.

(6) In assistance unit size 6, the 6 "0" rent awards equaled 8.96% of the unequal assistance units.

(7) In assistance unit size 7, the 3 "0" rent awards equaled 12.50% of the unequal assistance units.

(8) In assistance unit size 8, the 1 "0" rent awards equaled 6.67% of the unequal assistance units.

(9) In assistance unit size 9, the 1 "0" rent awards equaled 20.00% of the unequal assistance units.

5. The Conclusion of Law be amended and supplemented to reflect the amended and supplemented Findings of Fact.

6. The judgment be amended to reflect the amended and supplemented Findings of Fact and Conclusions of Law.

THE PLAINTIFFS

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

IN THE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

-----X
RUTH JOHNSON, et al.,

PLAINTIFFS,

VS.

HENRY C. WHITE,

DEFENDANT.
-----X

CIVIL ACTION NO. 14,620

ORDER

The Plaintiffs' Motion for Transcript In Forma Pauperis having been heard, and it appearing for the reasons stated therein that Plaintiffs should be granted a transcript of the hearing on May 23, 1972 in forma pauperis in order to prepare an appeal and since, it has been previously determined by the Court in accordance with the provisions of 28 U.S.C. §753(f) that the said appeal is not frivolous and presents a substantial question of law, it is accordingly ORDERED:

That the Plaintiffs be granted a transcript of the hearing on May 23, 1972 in forma pauperis.

M. Joseph B. Blumfeld
U.S.D.J.

Dated at Hartford, Connecticut, this 15th day of
November, 1972, at _____.M.

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUTH JOHNSON ET AL,
PLAINTIFFS,

[Handwritten initials]

VS.

CIVIL ACTION NO. 14,620 *[Handwritten initials]*

HENRY C. WHITE, individually and as
Commissioner of Welfare of the
State of Connecticut,

DEFENDANT.

NOTICE OF APPEAL

Notice is hereby given that the Plaintiffs above named, on behalf of themselves and all other persons similarly situated, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 17th day of June, 1972; from the order dated February 10, 1975, denying Plaintiffs' motion to reopen, set aside, alter and amend judgment, for relief from judgment, to allow further evidence and allow reargument, for rehearing and for stay of the execution of judgment pending disposition of motion; and from the order dated February 10, 1975, denying Plaintiffs' motion to amend and supplement findings of fact and conclusions of law.

THE PLAINTIFFS,

Dated: February 20, 1975

By:

[Handwritten signature]
William H. Clendenen, Jr.
David M. Lesser
CLEDENEN & LESSER
No. 152 Temple Street
New Haven, Connecticut 06510

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUTH JOHNSON ET AL,
PLAINTIFFS,

VS.

CIVIL ACTION NO. 14,620

HENRY C. WHITE, individually and as
Commissioner of Welfare of the
State of Connecticut,

DEFENDANT.

REQUEST FOR AUTHORIZATION TO PROSECUTE APPEAL
IN FORMA PAUPERIS

The Plaintiff class of welfare recipients hereby request
the Court's authorization to prosecute their appeal herein in
forma pauperis pursuant to 28 U.S.C. §1915. In support of this
motion the Plaintiff class represents:

- a. They were granted permission to proceed in forma
pauperis in the district court;
- b. Due to their status as welfare recipients, they
remain indigent.

THE PLAINTIFFS,

Dated: February 20, 1975

By: William H. Clendenen, Jr.
David M. Lesser
CLEDENEN & LESSER
152 Temple Street
New Haven, Connecticut 06510
203/787-1183

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FEB 26 1975
NEW HAVEN

*Remission to appeal in
forma pauperis granted -
2-24-75 H.V. 34508*

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUTH JOHNSON, ET AL

Plaintiffs

VS.

HENRY C. WHITE

Defendant

CIVIL ACTION NO. 14,620

February 26, 1976

DEFENDANT'S OBJECTION TO PLAINTIFFS' REQUEST
TO PROSECUTE APPEAL IN FORMA PAUPERIS

The defendant respectfully objects to the plaintiffs being allowed to prosecute their appeal in forma pauperis because of the laches of over 2 1/2 years and because the plaintiffs' chances of succeeding on appeal are remote.

DEFENDANT

BY: /s/ Francis J. MacGregor
Francis J. MacGregor
Assistant Attorney General
93 Brainard Road
Hartford, Connecticut 06114

CERTIFICATION

This is to certify that on the 26th day of February, 1976,

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a copy of the foregoing Defendant's Objection to Plaintiffs' Request to Prosecute Appeal in Forma Pauperis was mailed to the following counsel of record:

William H. Clendenen, Jr. Esq.
David M. Lesser, Esq.
Clendenen and Lesser
152 Temple Street
New Haven, Connecticut 06510

Douglas M. Crockett, Esq.
Tolland-Windham Legal Assistance, Inc.
736 Main Street
Willimantic, Connecticut 06226

/s/ Francis J. MacGregor

FRANCIS J. MAC GREGOR
Assistant Attorney General
Attorney for the Defendant

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Q Now, when you were looking at the welfare standards, I assume you took the standards as published --

A Yes.

Q -- to use for a basis? Were these standards that you said were -- in which there was the gap?

A Yes.

Q When you took these standards as published, were you comparing these standards, welfare standards, with pure rent or contract rent?

A I was comparing them with the contract rent as defined in the census.

Q So, then, I presume you didn't include with the welfare rent standards the added utilities?

A No. As a matter of fact, in making these tables that -- let me make clear what I did -- I took the public housing figures, plus 10% as the first figure, public housing plus rental figure plus 10%.

Q Now, did you take into consideration when you were doing your study that a good many welfare recipients are paid in excess of the standard?

A I then adjusted my figures to the maximum figure given me for each city.

SANDERS, GAI & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

105 CHURCH STREET
NEW HAVEN, CONNECTICUT

750 MAIN STREET
HARTFORD, CONNECTICUT

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Q But this was the maximum in the standard, isn't that correct?

A Maximum in the standard, payable at that city.

Q But if I told you -- and take my word for it --

A Yes.

Q -- this is correct -- that in Connecticut the standards aren't always the maximum, but there are a considerable amount of people on welfare that are paid in excess, some are being paid -- in fact, the named plaintiff in this case, Ruth Johnson, had a contract rent of \$238.00 a month, did you take into consideration the fact that the State of Connecticut pays in many cases in excess of the contract rent?

A Explicitly, no.

Q Now, you spent quite a bit of time discussing incomes between two and 3,000, three and 4,000, four and 5,000. Is it your belief that AFDC families -- first -- let me withdraw that.

Is this figure that you were using, say, under 5,000, the gross income of the family or the net income after taxes?

A Net income after taxes.

Q Did that also include Social Security deduction?

A That has not been subtracted, just "after federal income

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A. It is my opinion that they do not.

Q. Now --

A. We will demonstrate that.

Q. In your survey, did you also arrive at any conclusions with respect to market conditions as a variation of geographical location in the State of Connecticut?

A. Yes. I should preface this by saying that apparently the Welfare Department did make some attempt to provide for differences from one community to another.

Q. You are talking now with reference to the standards currently in effect based on a hundred and -- having rent standards on 110% of public housing?

A. Yes. Would you repeat the question?

(Question read.)

Q. Is that correct?

A. Yes.

Q. All right. Continue, please.

A. The evidence I have suggests that except for the communities of Stamford and Norwalk, there is no significant difference in the gap between the actual market average and the welfare standard throughout the State, whether one were in the northeast, the northwestern part of the State or New Haven or

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Bridgeport or New London, no significant difference, however, there is in Stamford, Norwalk, a very wide gap, disturbingly wide between the welfare average and the actual market picture. A wider gap than elsewhere in the State.

Q As to actual market costs are there any significant geographic differences? You have explained the geographic pattern with respect to the gap, now as to actual absolute costs.

A Absolute cost, do you mean of providing housing? The answer to this would be, I would say, except again for Stamford and Norwalk, the western Fairfield County area, the answer to this would be essentially there was no significant difference.

Q Now, Doctor Stokes, will you describe in your own words the methods by which you arrived at these conclusions?

A The first thing I did was to attempt to define what I meant by the demand for housing, and in so doing I examined the total population under 5,000 -- number of families under \$5,000.00 in each of the 17 key communities of the 17 labor market areas in the State. I then determined what the average mobility rate was going to be. This mobility rate is a national census derived mobility rate, which, in fact, appears to be relatively conservative. So that, for example, if I take a look at --

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You can not start off with one criteria and measure the results against another criteria. Using statistics you can set up any initial criteria you want to set up, and you just have to follow through the same reasoning from the beginning to the end.

Q And the criteria you set up was the one suggested by H.E.W.; is that correct?

A Right.

Q If you follow Mr. Hadden's approach based on a criteria that he wanted, what sample size would you be required to have in order to get your 95 per cent coefficient, plus or minus 10?

A On page 21 of Mr. Hadden's deposition, February 28, he suggested that we go through every item that we're going to have in the final figures, and instead of picking an individual sample size for each one of the items, he said go to the most variable item and apply the same technique that I used for the total item, which was 95 per cent confidence, and plus or minus 10 per cent.

If this were the original criteria his methodology would be correct.

I went back and I went through some of the survey and I used his methodology to figure out what would the sample sizes be. And the sample size came out to be 25,873 out of 26,954.

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Q The AFDC population --

A AFDC population, 26,954. The sample required by Mr. Hadden's method as described on page 21; it would be 25,878. This would be 96 per cent sample.

Q So in other words, you are saying if you followed his approach, suggested by him, out of approximately 27,000 universe -- that's what they mean by the entire AFDC population -- by family unit size, you'd have to take 96 per cent of that, off the 27,000?

A That's correct. However, it is getting to the point where that would be no sample. That would be what is called a census. That would be 100 -- it is basically, it would be like taking 100 per cent inspection of all the items.

Q Based on the criteria that H.E.W. gave would it end up giving any more of an accurate survey?

A No, it would not, based on the criteria that H.E.W. gave us. In fact, that method would probably be more prone to error.

And in the text by Neter-Wasserman, based on the criteria that H.E.W. set up -- and I'll read a quote from Neter-Wasserman, on page 247, and this section deals with the reasons for sampling. It says:

"The results obtained by sampling are often almost as accurate and sometimes even more accurate than those obtained from a census. This statement

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MR. RICHARD GERTZOF, having been duly sworn, deposed and said:

DIRECT EXAMINATION BY MR. MAC GREGOR:

Q You have already testified, Mr. Gertzof.

A Yes.

Q Mr. Gertzof, at my request did you check out one or two items that were in the sample survey?

A Yes, I did.

Q Did you check out chore boy?

A Yes, I did.

Q In the sample survey of thirty-one hundred AFDC families, how many chore boys were paid during the fiscal year that ended in June 30th, 1971?

A One.

Q How much was that?

A Six dollars and fifty cents, that was the entire payment out of all thirty-one hundred.

Q Now on garbage, did you check out the total amount on garbage that was paid on the thirty-one hundred sample?

A Yes, I did.

Q How much was paid?

A There were --

Q Is this your handwriting?

A Yes, it is. I just have the dollars here, but the total dollars came to a hundred and sixty-four dollars and

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1 twenty-six cents.

2 Q A hundred and sixty-four dollars and twenty-six cents,
3 and that was for the full year on this thirty-one hundred
4 families?

5 A Yes, that is per month for the full year.

6 Q That is per month?

7 A Same with chore boy, chore boy was six fifty per
8 month.

9 Q There was a question by Mr. Glendon to Mr. Horton
10 that there was reimbursement on this ten million dollars, and
11 I was going to ask you: Does this ten million dollars go back
12 into the Welfare budget?

13 A No, ten million dollars out of our budget, and it is
14 reimbursable through the General Fund, so it still comes out
15 of our budget.

16 Q This five million dollars that was reimbursed would
17 never come back onto the Welfare Department's budget?

18 A No, it goes directly in the General Fund.

19 Q As I recall your testimony in the last deposition, you
20 said that you were willing to let anybody audit your tapes.

21 A Yes.

22 Q And did anybody come up to look at your program?

23 A Mr. Crockett came up for a few hours, about three or
24 four, about four hours, I guess. I went over the listings
25 with him, and offered the tapes.

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the state's?

MR. CROCKETT: Yes, your Honor.

THE COURT: Then why do we have it here now?

MR. CROCKETT: We've run variations on this program.

For example, one of our contentions is that equal and unequal household units should not be combined.

THE COURT: I thought he said something about adding heat as an item?

MR. CROCKETT: The HEW brief indicates that the initial flat grant program did not include heat as part of the utilities and that error was caught and then corrected by the Welfare Department.

We corrected it in our version of the flat grant program.

THE COURT: I see. So it is not an issue here?

MR. CROCKETT: No, it's not. It's the type of error that could happen to anyone.

BY MR. CROCKETT:

Q Is this another program prepared for us?

A Yes, it is.

Q Is this another version of the flat grant program?

A Yes.

Q Would you explain the modifications that you've made

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over at the same moment and then we have other copies of each program.

THE COURT: You would expect that they would be the same.

MR. CROCKETT: Yes.

THE COURT: Absent some sort of error or absent some sort of different data being submitted to you.

MR. CROCKETT: Right.

If we used the first one, there might be a question. This was just a way of eliminating that.

BY MR. MacGREGOR:

Q As far as the heat, you understand that the Welfare corrected the heat themselves, the heat mistake? You found no other arithmetical errors in how Welfare ran their tape, is that right?

A No, that's not right.

The Welfare Department, when they stored their data, they used a two-digit field so that they would get the number of cents. When you add up and then create an average you get a rounding error.

Q Didn't you testify on February 28th that even with that error it was infinitesimally small?

A Yes.

Q You had all these tapes and everything, and you knew you were going to have a deposition on February 28th, '72,

done and the record that was sent to HEW, is that right?

A Yes, it does.

Q And does it show that the cost of the flat grant program is actually more than the actual payments being made today?

A For the month of April, had we paid under flat grant we would have paid -- the Welfare Department would have paid around \$378,000 more as compared to their actual payment.

Q Multiplying that by 12, that would cost them a little over four and a half million dollars a year to run the flat grant, is that right?

A That is correct.

MR. MacGREGOR: May this be marked as a defendants' exhibit.

(Defendants' Exhibit 32: Cost of actual and flat grant payments for April, 1972, marked full exhibit.)

BY MR. MacGREGOR:

Q Was this computation and a tape one that your department ran?

A The Data Processing Department in the Welfare Department did a run of flat grant.

In other words, last November the system was designed so that we could have got the welfare checks out under flat grant. We updated all of the information that had happened

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between last November and April and then, in essence, we created a flat grant payment. Then we compared that payment versus the actual payment that we sent out the door.

This was worked out, aside from the computer systems, part of it was also worked out with the Budgeting Department of the Welfare Department to get those figures I worked with.

Q You worked on it?

A Yes. With the Budgeting Department also.

Q This was done under your supervision?

A Yes.

THE COURT: How do you account for that, Mr. Gertsoff? That is quite a price to pay for just going onto an administrative --

MR. MacGREGOR: I can ask him some questions. They're all in the testimony in the different depositions, but if your Honor wants it I'll give you a few examples.

BY MR. MacGREGOR:

Q One of the things when you set up the flat grant, did you annualize special payments to people who were only on for, say, two or three months? Did you annualize it for a full year?

A Yes, we did.

Q And as I recall your testimony, that added approximately \$700,000 to this?

Continues

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from 186
A That did.

Q And also all catastrophic losses that are now going to be paid outside the flat grant, because of the difficulty of separating them all these catastrophic losses - say, for household appliances, furnishings and furniture - they were put in the flat grant and despite the fact they're going to be paid outside?

A There's a number of factors involved that make for this four and a half million dollars more under the flat grant.

The concept of flat grant is averaging everything, all of what we are paying for together, and coming out with the flat grant average. Then you take and you add the updates on top of this. And the way we updated, following directions of HEW, I guess, the total amount of updates came to two or three per cent of the total award. This two or three per cent of a budget of a hundred million dollars comes out to like two or three million dollars.

Some of the other options we took, as Mr. MacGregor was just mentioning, added even more to the payment.

Q Was one of the options on a family of over 10, between 10 and 15, that they used a higher figure on the age of the children than was the median age?

A I'm not aware of that.

MR. MacGREGOR: It was in the HEW brief.

BY THE COURT:

Q Did you work on this whole program of updating and correcting all of the elements in order to adopt a flat grant plan system?

A Yes, I did.

Q And to carry out that work did you have anything to do with HEW?

A All throughout I worked with HEW.

Q Where?

A HEW, in the last -- well, first, when we started I had discussions with William Hickey and with the regional people in Boston.

Then since November, when the court case started, the Welfare Department has been working with representatives of HEW, including Miss Gertrude Lottman, Marguerite Shaw, Sam Fish, Arnold Lobistow in correcting or adding those things that HEW felt was necessary for the flat grant.

Q To what extent have you failed to include items that HEW has indicated you should include?

A Any item that HEW told us to include we included.

Q To what extent did you use your own figures for costs or for need contrary to or smaller than those suggested or required by HEW?

A We didn't do anything that was -- since November, when we have been working with HEW, we've taken all their suggestions. Any time they have suggested to make a change, we've

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is going to go and say he put the stamp of approval on this. And I think that distorts totally any notion of exception of validity.

I mean he can write a letter and I can write a letter and say I keep the record and say that's it.

THE COURT: Overruled.

MR. MacGREGOR: May that be marked Defendants' Exhibit 33, your Honor?

THE COURT: It may be so marked.

(Defendants' Exhibit 33: Letter from Gertsof to Hickey dated June 22, 1971, marked full exhibit.)

BY MR. MacGREGOR:

Q Have you made a calculation of how many people will receive more -- how many AFDC families will receive more under the flat grant?

A The monthly check, the current check of all AFDC beneficiaries, 20,002, I believe -- say 20,000 monthly checks will go up and approximately 9,000 checks will go down.

Q And how many will stay the same?

A Around 300.

Q About 300. So roughly, approximately 68 per cent of the welfare recipients will get more under the flat grant, is that correct?

A That is correct.

Q Now, there was talk about population, when you got

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up into the high family units, particularly 15. As I recall, there was some testimony in the deposition of either Mr. Hadden or Mr. Hoffman that you should have taken the whole population out of the whole universe for a family of 15.

In fact, did the sample give you the whole universe of the family of 15?

A Okay. We checked back in our records and there was one case in Assistance Unit 15 at that time. That is included in the survey.

That case, which was below the average of 10 to 15, that case has since been discontinued and now there is one more case that we've identified of Assistance Unit 15, of the entire population, and I believe the monthly award of that case is below the average flat grant of 10 to 15.

Q So in the whole universe of approximately 27,000 AFDC cases there was only one family of 15 at the time you took this survey and now, is that correct?

A That is correct.

THE COURT: And that one family received less than the average?

THE WITNESS: Of 10 to 15, yes.

BY MR. MacGREGOR:

Q In fact, I went down to your office yesterday and looked at the present family of 15 and isn't it correct that the amount of money that they would receive, if that one

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Is that true with a sample of 92, you could get a 95 per cent confidence interval with a population of 1200?

A Well, based on a criteria of 95 per cent confidence and you always have to add -- you can't just talk about 95 per cent confidence, you have to talk about the interval of estimate, plus or minus 10 per cent.

Based on that criteria and based on the criteria of trying to find the true average for transportation of the entire population, which consisted of 1163 members, 92 would not be adequate to find the true average of transportation for all 1163 cases.

Q You were present in Willimantic when Mr. Hadden and Mr. Hoffman testified and you read the transcripts of their testimony, is that right?

A Yes.

Q And then you testified later on. And wasn't your testimony that if you followed the procedure, the artificial procedure that they set up and the artificial criteria they set up that you would practically have to sample the whole universe?

A That is correct.

It's invalid statistically to set up a survey based on one set of criteria and then, when the survey is complete, to go back and change your criteria. The initial survey was set up on 95 per cent confidence, plus or minus 10 per cent

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THE WITNESS: What Mr. Hadden has done is to take a survey and apply criteria that they have generated themselves, rather than to take the criteria that was established at the beginning of the survey and measure the results of the survey against that criteria.

BY MR. MacGREGOR:

Q All right. Using the criteria that HEW suggested and accepted, would you say that your sample was valid?

A Based on the initial criteria, the sample was valid and I believe Mr. Hadden, on February 28th, also testified if our initial criteria was to have 95 per cent confidence, plus or minus 10 per cent, on the total award, that the results were statistically significant with the exception of, I think, one Assistance Unit size.

MR. MacGREGOR: I have no more questions.

BY THE COURT:

Q Before you leave, there has been testimony here that in a shared household, or in equal and unequal Assistance Units, that there is a substantial difference in the amount received by the equal units from those that would be received by the unequal units if you treated them separately.

Now, I don't know whether you know what I'm talking about.

A I do know.

Wed 3/25/72 93a

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that and somebody else would put on that calls for a value judgment, doesn't it?

He has explained what underlies the words, so far as he is concerned and so far as the use of statistical criteria was concerned.

So there we are. He says they looked at it, we've got some people in the department who know about these things and they say, well, it really doesn't matter much whether it is 10 or 15, so let's lump them all together. And he said they did not do this on the basis of actual statistical practice, as was done with the rest of the family units.

Is that correct?

THE WITNESS: Not the technical. No, the technical statistics was not followed out in order to prove that 10 through 15 should be combined together. It was a judgment of the people in the department.

MR. CLENDENEN: Fine.

MR. MCGREGOR: I only have two more questions, Mr. Gertzof.

REDIRECT EXAMINATION BY MR. MCGREGOR:

Q In November, about the time you took your second deposition, November 3th, you told Mr. Crockett, Mr. Clendenen

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and Mr. Lesser that they could have all the tapes that were run, right; any of those tapes which they wanted from the Department, is that correct?

A That's correct.

Q And did Mr. Crockett come down and get the tapes?

A Yes. That's how they ran their data.

Q Also you had the 52-T's. Those were the budgets from the 3100 sample, is that correct?

A They requested from the Department, I don't know how many, a few hundred, maybe.

Q But, anyway, you made all the budgets, the 52-T's available to Mr. Crockett, is that right?

MR. CLENDENON: Your Honor, we will agree to stipulate that they were very helpful in giving us a lot of help on that.

MR. MacGREGOR: The reason is your Honor seemed rather dubious about whether or not all the budget items were available. The only reason we are asking this question is to show that everything comes off a 52-T.

We certainly didn't try to conceal anything. We made the whole sample available to our opponents to look at.

If there's a question of credibility or anybody not being truthful, we claim if they weren't we gave

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CONNECTICUT STATE WELFARE DEPARTMENT
 AUTHORIZATION REPORT

CONFIRMS PHONE: 4044 CASE LOAD NO: 152-C-857222 CASE NO. (S):
 APPLICATION - DATE: TYPE AND MEMBERSHIP NO.

GENERAL ASSISTANCE: ☐ YES ☐ NO
 TRANSFER FROM: FACIL CODE: OPENING CODE: CLOSING CODE:

MAIL TO: 1. Cons. Gdn. or Sub. Payee, if any.
 2. Case Name: Mrs Gladys Hogan
 3. Address: 14 Wildrose Avenue, Waterford, CT 06385

1. CASE ADDRESS (if different):
 2. FORMER NAME/ADDRESS:
 3. CHANGE CONS. OR SUB. PAYEE:

AUTHORIZATIONS

APPLICATION WITHDRAWN: ☐ APPLICATION DENIED: ☐ (Give reason under Exp. 0-2-71)

GRANT: REG. ☐ PROV. ☐ MONTHLY AFDC - RENT: ☐ AMOUNT: \$ EFFECTIVE DATE:
 SEMI-MONTHLY: ☐

CLEAR PROVISIONAL: ☐ ELIGIBLE: ☐ NOT ELIGIBLE: ☐ FROM: TO: EFFECTIVE DATE: REDETERMINED: ☒ YES ☐ NO
 MONTHLY: \$ TO: \$
 AFDC RENT: no mod.
 SEMI-MONTHLY: \$

ISSUE: ☐ SUPPLEMENTAL: ☐ DUPLICATE: ☐ AMOUNT: \$ CHECK DATED: EFFECTIVE DATE:
 Suspend: ☐ REINSTATE: ☐ DISCONTINUE: ☐

HOLD CHECK OF (Date): RELEASE CHECK OF: CANCEL CHECK OF:
 CANCEL & REISSUE: CHECK DATED: REGULAR AMOUNT: \$ AMT. IN S. 0-2-71: \$

ISSUE VENDOR CHECK TO: AMOUNT: \$

INCOME	NEEDS
OASDI Primary: \$	Shelter: \$ PROV
OASDI Secondary: \$	Food: 17 50
Unemp. Comp.:	Clothing: 4 30
Relatives:	Personal: 1 60
Other (Explain below):	Household Supplies: 80
TOTAL INCOME: \$	Cooking Fuel: 75
TOTAL NEEDS: \$ 30 55	Electricity: 1 15
APPLIED INCOME: \$	Heat: 3 30
MONTHLY DEFICIT: \$ 30 55	Board & Room or Med. Care: 1 15
PAYMENTS: \$ 15 27	
1st of Month: \$ 15 27	
15th of Month: \$ 15 28	
Medical Facility:	TOTAL NEEDS: \$ 30 55

FAMILY MEMBERS -	EL	BIRTHDATE	SEX	RACE	D	W	A	R	EFFECTIVE DATE	NM	SOCIAL SECURITY NO. (S)	RELATIONS - 0-4-71
1. Gladys Hogan	0	7-13-29	F	W								
2. Thomas Hogan JR	0		M									
3. Thomas Hogan JR	1	2-12-68	M									
4. Walter Hogan	0											
5. Helen Hogan	0											
6. Clinic												
7. Medical Fac.												
8. Other												

EXPLANATIONS
 ① S.A.R. No modification

1193278
 CENTRAL OFFICE COPY

WORKER (Signature)
 K. Carlin

DATE
 5/11/71

SUPERVISOR (Signature)
 [Signature]

DATE
 6/1/71

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next S.A.R. 11/71



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

EXHIBIT
CASE NO. TYPE 14-1201
FULL EXHIBIT ☒
OCT 20 1971
FOR IDENTIFICATION ☒
U. S. DISTRICT COURT
DISTRICT OF CONN.

ASSISTANCE PAYMENTS
ADMINISTRATION

May 25, 1970

Our Reference: SRS-APA-P8

State Letter No. 1083

TO STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS

Subject: Action of the Supreme Court on the Matter of Rosado v. Wyman
397 U. S. 397, April 6, 1970

The decision of the Supreme Court in the above case deals with some of the issues raised by the requirement in section 402(a)(23) of the Social Security Act. This is the requirement that the States must update their assistance standards by July 1, 1969. The particular issue adjudicated in this case concerned the integration of special needs into the basic assistance standards.

The ruling of the Court requires a modification of the interpretation in the State Letter of October 17, 1969. Specifically, that State Letter provides at page 2, item 2.(c):

"Some States have consolidated their standard of assistance (i.e., have combined items) to simplify the determination of need. The updated revised or consolidated standard should be compatible in content and cost with the previous standards. As a minimum, the monetary amount of the consolidated standard must equal the total updated value of the former basic requirements."

The Court in Rosado held that section 402(a)(23) requires that all items in the standard of assistance, both basic items and special needs, be updated by July 1, 1969. Therefore, any consolidation of the State's standard after that date must be based on the full updated standard, including the updated special needs. The word "basic" must accordingly be eliminated from the above interpretation.

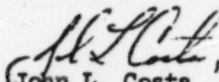
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We recognize that there are difficulties in computation when special needs, which were formerly recognized on an individual basis, are converted into a consolidated standard. Some fair method of averaging may be used.

We urge you to read this decision as a lucid and thoughtful discussion of a provision in the law which has been troublesome to many States.

Sincerely yours,


John L. Costa
Commissioner

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ASSISTANCE PAYMENTS
ADMINISTRATION

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

SRS-APA-PS
October 17, 1969

TO STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS

Subject: Updating State's Standard of Assistance in AFDC--Interpretation of Social Security Act Section 402(a)(23) and 45 CFR 233.20(a)(2)(ii) -- See SRS Program Regulation 20-7, dated 1/29/69

A number of questions have been raised by States regarding interpretation of regulations on updating AFDC standards. (See SRS Program Regulation 20-7, dated 1/29/69). The following has been prepared to help State agencies in meeting these important requirements.

Social Security Act Section 402(a)(23)

"Provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

45 CFR §233.20(a)(2)(ii)

"In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with paragraph (a)(3)(viii) of this section. Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards."

Interpretation

1. July 1, 1969

"By July 1, 1969," means the required updating will have been completed and all AFDC assistance payments will have been recomputed in accordance with revised amounts, and, if applicable, adjusted maximums and ratable reductions.

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2. Amounts

- a. "Amounts" means the money amounts or standards of assistance as defined and determined by the State for all goods and services (basic and special circumstance requirements) included within the State's regulations or other policy issuance and which are used as the criteria to establish need and the amount of the assistance payment.
- b. The standards of assistance may be one all inclusive amount for the items included in the standard; it may be an amount for each group of items, or it may be individual amounts for each item.
- c. Some States have consolidated their standard of assistance (i.e., have combined items) to simplify the determination of need. The updated revised or consolidated standard should be compatible in content and cost with the previous standards. As a minimum, the monetary amount of the consolidated standard must equal the total updated value of the former basic requirements.

3. "Reflect fully changes in living costs since such amounts were established" means that the State agency must identify when the amounts to determine need were last priced. A cost study of the AFDC amounts should have been completed between January 2, 1963, and July 1, 1969, and the changes in living costs from the date the amounts were last priced should have been determined.

4. Acceptable cost study methods

Method A

In those situations where the State plans provide for specified periodic cost reviews of the AFDC assistance standard of living on a continuing basis, such programmed cost studies conducted during above time period are satisfactory.

Method B

- a. Using the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, for the appropriate region determine the current index price for the applicable items of living;
- b. calculate percentage change for the items in the index from the date the standard was last established to the present date;
- c. apply the percentage change to each of the items or groups of items and determine dollar change;
- d. total the dollar cost of standard as reviewed;
- e. compare with existing standard to determine change.

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Method C

The State may conduct a statewide cost study of the items of living included in the amounts to determine need. Results of such studies are used as basis for determining amount of dollar costs for the items in AFDC assistance standards.

Method D

State may contract for another agency to conduct statewide cost studies of items of living included in the AFDC standard of living and determine changes in cost of items in AFDC assistance standard.

Method E

States may choose to revise content of existing standard of living and conduct cost studies of revised standards. U.S. Department of Labor, Bureau of Labor Statistics Bulletin No. 1570-5, may be used as a reference to re-establish a low-income level of living based on 1967 costs. A review of the content of items of living in the U.S. Department of Labor budget for the lower living standard for a 4-person urban family is suggested; the State selects the items of living consonant with conditions practicable in such State for a public assistance standard of living. Such standard must then be updated from Spring 1967 (date of U. S. Department of Labor, Bureau of Labor Statistics, 3 Levels of Living Standards) costs to current costs. Cost estimates for the 39 urban areas, described in the aforementioned publication, are available by writing to the appropriate Regional Offices of the Bureau of Labor Statistics. Agency may wish to use U. S. Department of Labor, Bureau of Labor Statistics Bulletin No. 1570-2 Revised Equivalence Scale for estimating costs of families by size, age, etc.

Method F

For States who wished to revise existing public assistance standards but for whom the Bureau of Labor Statistics Urban Family of Four is not representative of the State's rural population as defined by the Bureau of the Census, a study of the U. S. Department of Labor and U. S. Department of Agriculture Consumption Study Data of 1960 and 1961 are suggested reference.

After selecting the recognizable items from such compiled data, costs for such items would need to be updated to current amounts to be used to determine need in AFDC.

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Method G

The above suggested methods of updating standards does not preclude the acceptability of a different method which is identifiable, equitable, and objective.

5. Will Have Been Adjusted

- a. "Will have been adjusted" means the amounts used by the State agency to determine need will have been corrected to reflect the changes in costs of living, since the amounts were last established. This adjustment in assistance standards must be made, even though other provisions regarding payment may offset it.
- b. Adjusted amounts and costs study must bear a reasonable time relationship between cost study and the application into agency regulations. A cost study in early 1968, which was reflected in the agency's standard effective July 1, 1968, meets the requirements of the Act. However, if the agency did not adjust its standards until July 1, 1969, the cost study in early 1968 would not be acceptable; a more current study is needed.
- c. In some instances, State agencies, during the period since standard was last established and July 1, 1969, have increased the money amounts (standards of living) from time to time, as a result of moneys becoming available from State or Federal legislation. These additional moneys, added to the standard of living, at irregular intervals should be calculated as an offset against the total change in living costs between date standard was last established and the date of updating.

6. "Any Maximums That the State Imposes on the Amount of Aid Paid to Families Will Have Been Proportionately Adjusted."

This applies to dollar maximums. State maximums established for items of living (such as shelter costs) or overall for grants or payments, must be corrected to show the change in living costs since such maximums were established to the appropriate period between January 2, 1968, and July 1, 1969, as selected by the State agency.

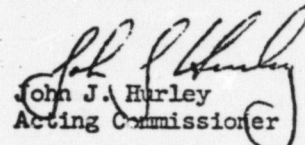
7. The State agency may make a ratable reduction. It is recommended that the State agency implement only one ratable reduction.
8. All AFDC assistance payments must be recomputed in accordance with the adjusted standards, and adjusted maximum and/or ratable reductions, when applicable. Implemented ratable reduction and adjusted maximums must be uniform statewide and objective.

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9. States must maintain their adjusted standards after July 1, 1969, subject to the option of making further adjustments to reflect changes in living costs.

Sincerely,


John J. Hurley
Acting Commissioner

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P14
 CASE NO. 14620
 OCT 1 1966
 U.S. DEPT. OF SOCIAL SERVICES
 OFFICE OF THE COMMISSIONER

Connecticut State Welfare Department
Social Service Policies - Public Assistance

Manual Vol. 1
Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses - Shelter 352

352 Shelter Costs - All Programs

Shelter expense is met, when required, in the following types of accommodations:

1. Rented house, apartment or room (furnished or unfurnished);
2. Home owned property;
3. Room and board arrangement;
 - a. Domiciliary Care;
 - b. Private Boarding House;
 - c. Rest Home with Nursing Supervision.

1. Beneficiary or Family Sole Occupant of Rented Facility

In low cost Public Housing, rent is budgeted as paid. In all other types of housing, rent is budgeted as paid within the maximum rental rates specified in Index Nos. 352.31 - 352.38.

Payment of rental in excess of the Department's maximum is approved only in those cases in which the situation is such that relocation to shelter within these rates is not possible immediately or is impracticable at the time. (Refer to Items a, b, and c below).

a. Excess Rent

If the rent charged exceeds the maximum rental rate and no adjustment downward is possible, rent may be budgeted as paid on a temporary basis. The beneficiary is informed of the Department's policy on shelter allowances, and of the need to relocate in accommodations within the Department's standards.

The situation is re-evaluated at three month intervals to determine what progress has been made towards relocation and whether the payment of the excess shelter costs will be continued.

The decision to extend the period for payment of the excess costs is based on the individual case factors, and the case record is documented to substantiate the decision. Examples of situations requiring consideration are:

circumstances beyond the control of the beneficiary or family which have precluded relocation;

(continued on following page)

Revised 10-21-66

Transmitted by Departmental Bulletin No. 1829, WSS #949

104a

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses - Shelter

352 - page 2

Beneficiary or Family Sole Occupant of Rented Facility (cont'd)

relocation at a rate within Agency standards is anticipated within a reasonable length of time; (not to exceed six months);

special needs which require proximity to a particular school or medical facility;

health factors which prohibit consideration of relocation;

educational and/or cultural backgrounds are such that removal from a particular community would clearly be disadvantageous;

lack of available housing due to limitations imposed by the community;

the need for Public Assistance is deemed to be temporary, and relocation would be disadvantageous to the individual's or family's future plans;

the situation has been referred to the Housing Consultant due to inability of large size family to locate housing;
(see item b. below)

b. Rentals in Excess of \$160*

If a large family is unable to secure housing, furnished or unfurnished, for \$160 a month or less with heat and utilities provided, the case will be referred to the Housing Consultant in Central Office for assistance in locating housing within the maximum rental rate.

c. Approval of Excess Rental Allowances

Approval of the Case Supervisor is required to continue an excess rental allowance when the total cost, including heat and utilities, furnished or unfurnished, does not exceed \$160.*

When the total cost exceeds \$160.*, the approval of the District Director is required. The District Director will maintain records of these cases for review by the Field Supervisor.

NOTE: The maximum rental rate of \$160 including heat and utilities does not apply to rates negotiated with Public Housing Authorities as these are computed by means of a formula established by law. Public Housing rental rates are budgeted as paid, and require no prior authorization.

(continued on following page)

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NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses - Shelter

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General Statement (contd)

Referral to the Resource Supervisor shall be made in situations when there is reason to doubt the ability or the willingness of the beneficiary to proceed on his own initiative with the re-negotiation or when the information presented by the beneficiary regarding re-negotiability requires further exploration. From the analysis made of the situation, the Resource Supervisor shall recommend the direction to be taken with regard to the mortgage, giving reasons. Responsibility for the decision regarding the amortization payment, when it is included in the assistance plan, rests with Social Service staff.

3. Living Arrangements Shared with a Legally Liable Relative

The shelter allowance budgeted shall not exceed a proportionate share of the rent paid or of net carrying charges or of the applicable rental rate (Index Nos. 352.3 - 352.38), whichever is lower, when the beneficiary lives in a home owned and occupied by a legally liable relative.

a. Rented Housing

The proportionate share shall not exceed the actual cost of shelter divided by the number of persons in the household and multiplied by the number of persons included in the assistance plan.

b. Relative Owned Property

The carrying charges on the relative's property shall be computed on the basis of the following expenses: taxes, insurance (on real property only), water rent, interest and mortgage payments. Current payments for essential repairs shall be included as property costs. When property is income producing, the gross rental income shall be applied against the carrying charges and cost or repairs to determine the net income, if any. On the basis of property income and income from other sources available to the relative, a decision shall be made with respect to granting a shelter allowance and in what amount.

4. Living Arrangements Shared with a Non-legally Liable Relative or Friend

Knowledge of the previous and present pattern of family living and household management will determine the need for and the amount of the shelter allowance. A shelter allowance, when paid, shall be budgeted under one of the following arrangements:

- a. A proportionate share of rent as paid or payment of base rental rate (Index Nos. 352.3 - 352.38), whichever is lower

Revised
3-12-62

(continued on following page)

Transmitted by Departmental Bulletin No. 1061, WSS #342

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses - Shelter

352 - page 5

General Statement (contd)

b. A rented room rate as paid or the base rental rate, whichever is lower

5. Other Types of Living Arrangements

A. Beneficiary lives in Property owned but not occupied by a legally responsible relative

(1) Relative other than absent Parent

Net property costs (defined in item 3) can be budgeted in full, if the beneficiary is the occupant of a single dwelling, or prorated, if the property is a multiple dwelling in which the beneficiary occupies a unit. In either instance, the amount budgeted may not exceed the applicable base rental rate. See Index Nos. 352.31 - 352.33.

Exception to budgeting net property costs within the prescribed limitation can be taken under one of the following conditions:

- (a) When legally responsible relative's income is marginal, i.e., below the exemption scale for the particular size family (see Index No. 344.2) and there is full or partial dependence for support on the income from property holdings.
- (b) When the Program Supervisor, basing decision on case factors peculiar to the case situation, gives approval provided the amount of rent allowed does not exceed the applicable rental rate.

(2) Legally Liable Relative is The Absent Parent

Property costs are not budgeted when the absent parent owns the home occupied by the assistance unit.

D. AFDC Child with Non-needy, Non-legally Liable Relative

When non-needy, non-legally supervising relatives of AFDC children request assistance with the shelter allowance, the amounts budgeted may not exceed the following scale:

\$20	per	month	for	1	child
\$30	"	"	"	2	children
\$40	"	"	"	3	or more children

(continued on following page)

Revised 9-19-66

Transmitted by Departmental Bulletin No. 1811, WSS #930

107.a

Connecticut State Welfare Department
Social Service Policies - Public Assistance

Manual Vol. 1
Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses - Shelter

352 - page 6

General Statement (contd)

6. Shared Household of Public Assistance Units

When all members of the household have applied for or are receiving public assistance, a combined assistance plan shall be made in accordance with policy and procedures in Index No. 372. The rental rate applicable shall be based on the number of persons comprising the household irrespective of the category under which assistance is granted. The amount of the shelter allowance to be budgeted shall be determined in accordance with policy outlined in items 1 through 4 above.

7. Shelter in Kind (See Index No. 337)

8. Furnished Accommodations

Rental for a furnished room or apartment shall be met when the landlord supplies stove for cooking and refrigerator in addition to the major home furnishings which include fully equipped bed, chairs, table, dresser or wardrobe sufficient in number and in usable condition for the occupant(s) of the apartment. In so far as possible, the use of furnished apartments for families, particularly with children, shall be discouraged. The desirability and practicability of providing basic home furnishings for occupancy of an unfurnished apartment at the base rental rate shall be considered as an alternative in the exploration of the family's needs as they are determined with regard to health, decency and rehabilitation. Similar consideration shall be given to beneficiaries who are occupants of furnished rooms and who receive restaurant allowances because of lack of cooking facilities. (See Index No. 364.1, Household Furniture, Furnishings and Appliances).

9. Room and Board Arrangements (See Index No. 352.6)

Revised 6-2-65

Transmitted by Departmental Bulletin No. 1543, WSS #712

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Connecticut State Welfare Department
Social Service Policies - Public Assistance

Manual Vol. 1
Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses - Shelter

352.3 - page 2

Base Rental Rates (contd)

The rental rates specified in Index Nos. 352.31 - 352.38 are to be related to size of household as follows:

<u>Number in Family</u>	<u>Number of Rooms</u>
1 or 2 persons (Adults)	3 rooms
2 persons (Parent and child, aged 10 yrs. or older)	4 "
3 persons	4 "
4 or 5 persons	5 "
6 or 7 persons	6 "
8 or more persons	7 "

Housing into which the beneficiary relocates shall not be larger than that which is specified in the above table for the size household. The exception to this shall be when the number of rooms exceeds the scale but the rent charged is within the rental rate for the number of rooms considered adequate for the size household.

Rental Rates in Low-cost Housing Projects

I Formula for Low-cost Housing Rental Rates

For tenants who receive 100% welfare aid (state or local) and have no direct income from any other source, rentals are fixed by each housing authority for the following rental year based on -

1. one-half of the amount paid as principal and interest on bonds for the preceding fiscal year
2. the full amount of costs for maintaining and operating the project including insurance costs and administrative expenses of the authority, for the preceding fiscal year
3. the actual reserve created to meet the largest principal and interest costs of bonds for a one-year period, during the preceding fiscal year.

The total amount of such costs is divided by the total number of rooms in the housing project to establish the rental cost per room.

II Procedure for Establishing Rental Rates and Adjusting Awards

1. The Housing Authority submits a request for Departmental consideration of an increase in rates for beneficiaries of public assistance. If the request is sent to the District Office, the District Director immediately notifies the Chief, Bureau of Business Administration.

Revised 3-30-65
Effective 4-1-65

(continued on following page)

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NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses - Shelter

352.3 - page 3

Base Rental Rates (contd)

2. The Town Audit Section in Central Office examines and verifies the new rates to determine that they are in accordance with the formula established by law.
3. If the rates are acceptable, the Chief, Bureau of Business Administration, sends a letter to the Director of the Housing Authority in which he states that the new rates are acceptable and advises him to contact the District Director if there are any questionable areas involved in processing the individual changes of rates for Public Assistance beneficiaries. A copy of this letter is sent to the District Director, the Town Audit Section and the Chief, Bureau of Social Services and the Chief, Bureau of Staff Services.
4. The Housing Authority sends to the District Director a list showing the new rental rate for each Public Assistance beneficiary residing in the housing project.
5. The District Office staff proceeds as follows:
 - a. Identifies those cases having no direct income from any outside source
 - b. Clears questionable cases with the Housing Authority
 - c. Authorizes the appropriate modifications by means of Form W-52T.

NOTE: When a large number of cases is involved, the District Office is responsible for coordinating and planning the work to insure daily receipt of the completed W-52T's in Central Office with the final group received in time to effect the changes without the necessity for undue special handling.

Revised 10-21-66

Transmitted by Departmental Bulletin No. 1829, WSS #949

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Connecticut State Welfare Department
Social Service Policies - Public Assistance

Manual Vol. 1
Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses: Shelter

352.32

352.31 D.O. #1 - New Haven

Rent Standards Based on Rates Negotiated With the New Haven Housing Authority (effective 5-1-71)

No. of Rooms	2½	3	3½	4	4½	5	5½	6	6½	7	8
No. of Persons	1	2	2	3	3	4	5	6	7	8	9 or more

Low Cost Public Housing Rate

Unfurn.	\$64	76.	89.	102.	115.	127.	140.	153.	166.*	178.*	204.*
---------	------	-----	-----	------	------	------	------	------	-------	-------	-------

Maximum Rent Without Heat and Utilities

Unfurn.	\$70.	84.	98.	112.	127.	140.	154.	168.*	183.*	196.*	224.*
Furnish	77.	92.	108.	123.	140.	154.	169.*	185.*	201.*	216.*	246.*

Maximum Rent With Heat and Utilities

No. of Rooms	2½		3		3½		4		4½		5	
	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas
Unfurn.	\$71.	81.	105.	105.	119.	119.	138.	138.	153.	153.	171.*	172.*
Furnish	98.	98.	113.	113.	129.	129.	149.	149.	166.*	166.*	185.*	186.*

No. of Rooms	5½		6		6½		7		8	
	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas
Unfurn.	\$185.*	186.*	206.*	208.*	221.*	223.*	241.*	242.*	269.*	270.*
Furnish	200.*	201.*	223.*	225.*	239.*	241.*	261.*	262.*	291.*	292.*

*NOTE: Total rent paid including heat and utilities may exceed \$160. on exception basis only as provided for in policy.

These rates apply to private housing in the following towns:

Branford	Milford	North Haven
East Haven	New Haven	Orange
Hamden	North Branford	Woodbridge

Revised 4-14-71
Effective 5-1-71

Transmitted by Departmental Bulletin No. 2662

Connecticut State Welfare Department
Social Service Policies - Public Assistance

Manual Vol. 1
Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses: Shelter

352.34

352.34 D.O. #4 - Norwich

A. Rent Standards Based on Rates Negotiated with the Norwich Housing Authority (Effective 4-1-71)

(Standards which include heat and utilities revised, effective 4-1-71)

No. Rooms	3½	4½	5½	6½				
No. Persons	1-2	3	4-5	6-7				
Low Cost Public Housing Rate								
Unfurnished	\$51.00	66.00	80.00	95.00				
Maximum Rent without Heat and Utilities								
Unfurnished	\$56.00	73.00	88.00	105.00				
Furnished	62.00	80.00	97.00	116.00				
Maximum Rent with Heat and Utilities								
	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas
Unfurnished	\$77.	77.	99.	99.	119.	120.	143.	145.
Furnished	83.	83.	106.	106.	128.	129.	154.	156.

NOTE: Total rent paid including heat and utilities may exceed \$160.00 only as provided for in Index No. 352, pages 1 and 2.

These rates apply to private housing in the following towns:

Bozrah	Lisbon
Colchester	Norwich
Franklin	Preston
Griswold	Sprague
Lebanon	Voluntown

Revised 1-21-71
Effective 4-1-71

Transmitted by Departmental Bulletin No. 2617

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Connecticut State Welfare Department
Social Service Policies - Public Assistance

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Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses: Shelter

352.34, page 5

D.O. #4 - Norwich (contd)

E. Rent Standards Based on Rates Negotiated with the New London Housing Authority (Effective 6-1-70)

Number of Rooms	1-3	4	5	6	7	8
Number of Persons	1-2	3	4-5	6-7	8	Over 8

Low Cost Public
Housing Rate

Unfurnished	\$71.00	94.00	118.00	141.00	165.00*	188.00*
-------------	---------	-------	--------	--------	---------	---------

Maximum Rent
without Heat
and Utilities

Unfurnished	\$78.00	103.00	130.00	155.00	182.00*	207.00*
Furnished	86.00	113.00	143.00	171.00*	200.00*	228.00*

Maximum Rent with Heat and Utilities

No. Rooms	3	4	5	6	7	8						
	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas
Unfurn.	\$99.	99.	129.	129.	161.*	162.*	193.*	195.*	227.*	228.*	252.*	253.*
Furnished	107.	107.	139.	139.	174.*	175.*	209.*	211.*	245.*	246.*	273.*	274.*

*NOTE: Total rent paid including heat and utilities may exceed \$160.00 only as provided for in Index No. 352, page 2.

These rates apply to private housing in the following towns:

East Lyme
Groton
Ledyard
Lyme
Montville
New London

North Stonington
Old Lyme
Salem
Stonington
Waterford

Revised 6-3-70
Effective 6-1-70

Transmitted by Departmental Bulletin No. 2483, WSS #1522

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Connecticut State Welfare Department
Social Service Policies - Public Assistance

Manual Vol. 1
Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Basic Expenses: Shelter 352.36

352.36 D.O. #6 - Waterbury

A. Rest Standards Based on Rates Negotiated with the Waterbury Housing Authority (Effective 1-1-70)

No. Rooms	1-3½	4-4½	5-5½	6-6½				
No. Persons	1-2	3	4-5	6-7				
Low Cost Public Housing Rate								
Unfurnished	\$50.00	64.00	78.00	92.00				
Maximum Rent without Heat and Utilities								
Unfurnished	\$55.00	70.00	85.00	101.00				
Furnished	\$60.00	77.00	94.00	111.00				
Maximum Rent with Heat and Utilities								
	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas
Unfurnished	\$76.	76.	96.	96.	117.	118.	139.	141.
Furnished	\$81.	81.	103.	103.	125.	126.	149.	151.

NOTE: Total rent paid including heat and utilities may exceed \$160.00 on exception basis only as provided for in policy.

These rates apply to private housing in the following towns:

Cheshire
Middlebury
Naugatuck
Prospect

Southbury
Waterbury
Wolcott

Revised 5-20-70

Transmitted by Departmental Bulletin No. 2474, WSS #1514

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STIPULATION CHART I
FAP
SAMPLE SURVEY AND UPDATED NEEDS

EXHIBIT	11
CASE NO.	TYPE
FULL EXHIBIT	<input type="checkbox"/>
MAY 23 1972	
FOR IDENTIFICATION	<input type="checkbox"/>
U. S. DISTRICT COURT DISTRICT OF CONN.	

The data on Stipulation Chart I was obtained from the H.E.W. Brief (Civil No. 14,620), the "FLATGRNT I-ALL UNITS" printout, and from calculations using the figures from the two above-mentioned sources.

The "FLATGRNT I-ALL UNITS" printout is a source for the figures appearing under the following headings on Stipulation Chart I.

1. Survey FCPH
2. Survey Shelter
3. Survey Recurrent Needs
4. Survey Non-Recurrent Needs

The titles on the "FLATGRNT I-ALL UNITS" printout which correspond to those appearing on Stipulation Chart I are as follows:

1. FCPH Allowance
2. Base Rent; Utility
3. Card 2 Totals *** Grand Average
4. Card 3 Totals *** Grand Average (divided by 12).

In other words, if one were to check the figures on Stipulation Chart I, under Survey FCPH, one would look at the "FLATGRNT I-ALL UNITS" printout -- for the appropriate assistance unit -- under FCPH Allowance. The survey shelter figure on Stipulation Chart I is the sum of the BASE RENT and UTILITY figures on FLATGRNT I-ALL UNITS." Survey Recurrent Needs corresponds to Card 2 totals *** Grand Average, and Survey Non-Recurrent Needs corresponds to Card 3 totals *** Grand Average divided by 12 because the Card 3 totals *** Grand Average is a yearly amount.

The H.E.W. Brief is a source for the figures appearing under the following headings on Stipulation Chart I:

1. Updated FCPH
2. Updated Shelter
3. Excess Utilities
4. Updated Recurrent Needs
5. Updated Non-Recurrent Needs

These figures are part of H.E.W.'s Appendix 3, which is titled "State of Connecticut Welfare Department - Exhibit D - Survey to Establish Standard of Need - Detailed Chart of Results and Updates."

The data found under the following columns is the result of calculation involving figures whose sources have already been identified:

The column headed Survey Standard of Need is the sum of the following:

1. Survey FCPH
2. Survey Shelter
3. Survey Recurrent Needs
4. Survey Non-Recurrent Needs

The column headed Updated Standard of Need is the sum of the following:

1. Updated FCPH
2. Updated Shelter
3. Excess Utilities
4. Updated Recurrent Needs
5. Updated Non-Recurrent Needs

The column labeled Amount of Update is the Updated Standard of Need minus the Survey Standard of Need.

The percent update is derived from dividing the Amount of Update by the Survey Standard of Need.

STIPULATION CHART I
FAP
SAMPLE SURVEY AND UPDATED NEEDS

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	<u>SURVEY FCPH</u>	<u>UPDATED FCPH</u>	<u>SURVEY SHELTER</u>	<u>UPDATED SHELTER</u>	<u>EXCESS UTILITIES</u>	<u>SURVEY RECURRENT NEEDS</u>	<u>UPDATED RECURRENT NEEDS</u>	<u>SURVEY NONRECURRENT NEEDS</u>	<u>UPDATED NONRECURRENT NEEDS</u>	<u>SURVEY STANDARD OF NEED</u>	<u>UPDATED STANDARD OF NEED</u>	<u>AMOUNT OF UPDATE</u>	<u>PERCENT UPDATE</u>
1	38.12	41.15	27.65	33.36	.08	.63	.70	4.72	5.27	71.12	80.56	9.44	13.27
2	90.75	93.85	94.05	94.94	1.44	3.44	3.72	9.60	10.54	197.85	204.49	6.64	3.36
3	128.10	128.11	115.00	115.85	1.71	3.72	4.01	13.02	14.29	259.84	263.97	4.13	1.59
4	158.41	159.14	126.97	128.20	1.53	3.79	4.06	16.14	17.76	305.35	310.69	5.34	1.75
5	193.23	193.73	130.07	131.03	2.15	4.14	4.49	22.67	24.98	350.12	356.38	6.26	1.79
6	230.03	230.63	138.58	139.56	1.92	4.15	4.45	25.30	27.83	398.06	404.40	6.34	1.59
7	272.22	272.93	145.38	146.36	2.04	4.59	4.95	28.20	31.03	450.39	457.32	6.93	1.54
8	309.17	309.97	151.34	142.41	1.49	4.90	5.26	32.79	36.10	498.20	503.23	7.03	1.41
9	347.53	348.43	150.88	151.95	3.01	5.49	5.97	34.33	38.00	538.23	547.36	9.13	1.70
10	374.93	375.94	157.11	154.93	5.35	7.52	8.94	36.57	45.11	576.13	590.27	14.14	2.45
11	408.37	409.47	144.61	154.93	5.35	5.82	8.94	49.14	45.11	607.94	623.80	15.86	2.61
12	389.60	442.95	147.56	154.93	5.35	10.70	8.94	39.63	45.11	587.49	657.28	69.79	11.88
13	485.10	486.40	164.05	154.93	5.35	12.57	8.94	63.65	45.11	725.37	700.73	24.64	- 3.40
14	537.60	539.00	111.00	154.93	5.35	22.00	8.94	15.24	45.11	685.84	753.33	67.49	9.84
15	583.85	585.35	220.35	154.93	5.35	10.21	8.94	36.13	45.11	850.54	799.68	50.86	- 5.98
									TOTAL	7102.47	7255.49	153.02	45.40
									AVERAGE			10.20	3.03
Total standard increased 2.16% to obtain updated standard of need.													

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EXHIBIT 117a
CASE NO. TYPE 117a
FULL EXHIBIT ☒
MAY 23 1972
FOR IDENTIFICATION ☒
U. S. DISTRICT COURT
DISTRICT OF CONN.

STIPULATED CHART II
FAP
COMPARISON OF SURVEY STANDARDS FOR ASSISTANCE UNITS
EQUAL TO AND UNEQUAL TO HOUSEHOLD SIZE

The figures on Stipulated Chart II are derived from three computer printouts and one calculation.

The first computer printout used to compile Stipulated Chart II was the printout labeled "FLATGRNT I-ALL UNITS." The figures taken from "FLATGRNT I-ALL UNITS" are the amounts for FCPH, BASE RENT, UTILITY, RECURRENT AND NONRECURRENT (NEEDS) for Assistance Units 1, 2, 3, 4, and so on through Assistance Unit 11. (Assistance Units 1, 2, 3, etc., are not to be confused with either Assistance Units 1=, 2=, 3=, etc., or with Assistance Units 1≠, 2≠, 3≠, etc.) Figures for FCPH, BASE RENT, and UTILITY are labeled the same on Stipulated Chart II as they are on "FLATGRNT I-ALL UNITS." The figures under Recurrent (Needs) on Stipulation Chart II are labeled Card 2 Totals *** Grand Average on the printout. The figures under Non-recurrent (Needs) on Stipulated Chart II are labeled Card 3 Totals *** Grand Average on the printout and are expressed as yearly totals, and therefore, have been divided by 12 in order to arrive at monthly totals.

The second computer printout used to compile Stipulated Chart II was the printout labeled "FLATGRNT II-ASSISTANCE UNIT EQUAL TO HOUSEHOLD UNITS." The figures taken from "FLATGRNT II-ASSISTANCE UNITS EQUAL TO HOUSEHOLD UNITS," are the amounts for FCPH, BASE RENT, UTILITY, RECURRENT and NON-RECURRENT (Needs) for Assistance Units 1=, 2=, 3=, and so on through Assistance Unit 11=. The labelling differences described in the previous

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paragraph hold true for Stipulated Chart II and "FLATGRNT II- ASSISTANCE UNITS EQUAL TO HOUSEHOLD UNITS." The figures under RECURRENT (Needs) on Stipulated Chart II appear under Card 2 totals *** Grand Average; the figures under NON-RECURRENT (Needs) on Stipulated Chart II appear under Card 3 totals *** Grand Average. (These are expressed as yearly totals, and therefore have been divided by 12 in order to arrive at monthly totals.

The third computer printout used in compiling Stipulated Chart II was "FLATGRNT III - ASSISTANCE UNITS UNEQUAL TO HOUSEHOLD UNITS." The amounts from "FLATGRANT III" are the amounts for FCPH, BASE RENT, UTILITY, RECURRENT AND NONRECURRENT (Needs) for Assistance Units 1[#], 2[#], 3[#], and so on through Assistance Unit 11[#]. The labelling differences described in the previous paragraphs hold true for Stipulated Chart II, and FLATGRNT III, i.e. the figures under RECURRENT (Needs) on Stipulated Chart II appear under Card 2 totals *** Grand Average, etc.

The calculation used in completing Stipulated Chart II was the addition of the FCPH, BASE RENT, UTILITY, RECURRENT and NON-RECURRENT (Needs) figures to arrive at the totals found under the column titled Monthly Payment.

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STIPULATED CHART II
FAP
COMPARISON OF SURVEY STANDARDS FOR ASSISTANCE UNITS EQUAL
TO AND UNEQUAL TO HOUSEHOLD SIZE

	<u>FCPH</u>	<u>Base Rent</u>	<u>Utility</u>	<u>Recurrent</u>	<u>Nonrecurrent</u>	<u>MONTHLY PAYMENT</u>
1	\$ 38.12	\$ 20.75	\$ 6.92	\$.63	\$ 4.72	\$ 71.12
1=	-0-	-0-	-0-	-0-	-0-	-0-
1≠	38.12	20.73	6.92	.63	4.72	71.12
2	90.75	75.35	18.70	3.44	9.61	197.85
2=	94.52	92.55	20.83	4.34	10.40	222.64
2≠	84.49	46.74	15.14	1.95	8.29	156.61
3	128.10	86.99	28.01	3.72	13.02	259.84
3=	129.21	96.31	30.10	3.78	13.59	272.99
3≠	124.84	59.50	21.86	3.55	11.36	221.11
4	158.41	96.74	30.26	3.79	16.15	305.35
4=	157.52	102.63	32.07	3.86	17.38	313.46
4≠	161.98	72.94	22.94	3.50	11.14	272.50
5	193.23	99.68	30.39	4.14	22.68	350.12
5=	192.09	103.02	31.53	4.07	22.95	353.66
5≠	199.09	82.50	24.54	4.54	21.29	331.96
6	230.03	102.46	36.12	4.15	25.30	398.06
6=	229.36	106.35	36.40	4.38	25.24	401.73
6≠	233.85	80.25	34.46	2.85	25.63	377.04
7	272.22	101.66	43.72	4.59	28.20	450.39
7=	271.28	100.70	43.84	4.32	28.74	448.88
7≠	279.00	108.58	42.84	6.51	24.31	461.24
8	309.17	106.11	45.23	4.90	32.79	498.20
8=	308.42	108.16	45.82	4.85	32.79	500.04
8≠	313.18	95.04	42.04	5.18	32.82	488.26
9	347.53	105.21	45.67	5.49	34.33	538.23
9=	348.58	103.40	46.07	4.45	36.12	538.62
9≠	337.79	121.93	41.95	15.07	17.88	534.62
10	374.93	118.35	32.76	7.52	36.57	576.13
10=	371.70	126.43	43.42	8.54	38.95	589.04
10≠	394.33	69.86	19.41	1.44	22.23	507.27
11	408.37	98.43	46.18	5.82	49.14	607.94
11=	414.97	124.22	45.40	5.48	48.56	638.63
11≠	395.16	46.85	47.76	6.50	50.28	546.55

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EXHIBIT	14-2-3	4
CASE NO.	TYPE	14-6-10
FULL EXHIBIT		<input checked="" type="checkbox"/>
MAY 23 1972		
FOR IDENTIFICATION <input type="checkbox"/>		
U. S. DISTRICT COURT		
DISTRICT OF CONN.		

STIPULATED CHART III
FAP
DIFFERENCES BETWEEN ASSISTANCE UNITS
EQUAL TO AND UNEQUAL TO HOUSEHOLD UNIT SIZE

The information on Stipulated Chart III has been derived from Stipulated Chart II, (and, therefore, from the printouts of "FLATGRNT II-ASSISTANCE UNITS EQUAL TO HOUSEHOLD UNITS", and "FLATGRNT III-ASSISTANCE UNITS UNEQUAL TO HOUSEHOLD UNITS,") and calculations involving the figures obtained from Stipulated Chart II.

The amounts which appear on Stipulated Chart III under the column headed Monthly Expenditure are taken from the column with the same title on Stipulated Chart II.

The amounts appearing under the column entitled "Dollar Difference" are the result of subtracting the monthly expenditure amount for Unequal Households (signified by 1 \neq , 2 \neq , 3 \neq etc.) from the monthly expenditure amount for equal households (signified by 1=, 2=, 3=, etc.).

The percent difference figures were obtained by dividing the dollar difference by the unequal household amount.

The weighted averages for dollar difference and percent differences are the results of the calculations shown on the chart. The various percent differences and dollar differences for assistance unit sizes 2-9 were multiplied by the populations of these assistance unit sizes. The results of the multiplications were added together and the sums were divided by the total population of assistance units 2-9.

STIPULATED CHART III
FAP
DIFFERENCES BETWEEN ASSISTANCE UNITS EQUAL
TO AND UNEQUAL TO HOUSEHOLD UNIT SIZE

FOR ASSISTANCE UNITS 2 -- 9

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ASSISTANCE UNIT	MONTHLY EXPENDITURE	DOLLAR DIFFERENCE	PERCENT DIFFERENCE
2=	\$222.64		
2≠	156.61	\$ 66.03	42.2%
3=	272.99		
3≠	221.11	51.88	23.5%
4=	313.46		
4≠	272.50	40.96	15.0%
5=	353.66		
5≠	331.96	21.70	6.5%
6=	401.73		
6≠	377.04	24.69	6.5%
7=	448.88		
7≠	461.24	- 12.36	- 2.7%
8=	500.04		
8≠	488.26	11.78	2.4%
9=	533.62		
9≠	534.62	4.00	0.7%
Weighted Average		44.09	22.13%

The following calculations demonstrate how weighted averages for dollar and percent differences were arrived at:

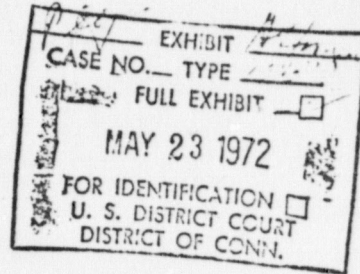
A.U.											
2	7328*	x	66.03	=	48386784	7328*	x	42.2	=	3092416	
3	6546	x	51.88	=	33960648	6546	x	23.5	=	1538310	
4	4798	x	40.96	=	19652608	4798	x	15.0	=	719700	
5	3013	x	21.70	=	6538210	3013	x	6.5	=	195845	
6	1898	x	24.69	=	4686162	1898	x	6.5	=	123370	
7	1082	x	-12.36	=	-1337352	1082	x	- 2.7	=	-29214	
8	597	x	11.78	=	703266	597	x	2.4	=	14328	
9	302	x	4.00	=	120800	302	x	0.7	=	2114	
25564					112711126	25564					5656869

A. $112711126 \div 25564 = 44.09$

B. $5656869 \div 25564 = 22.13\%$

* The numbers in this column represent the population sizes of each Assistance Unit Size.

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STIPULATED CHART IV
FAP
DIFFERENCE BETWEEN ALL ASSISTANCE UNITS BY SIZE

The data on Stipulated Chart IV was obtained from that portion of Stipulated Chart II which was derived from the FLATGRNT I - ALL UNITS printout. (Thus, the data on Stipulated Chart IV can be traced to the printout for FLATGRNT I - ALL UNITS.) The data was also obtained from calculations involving the figures obtained from Stipulated Chart II.

The amounts under the column titled "Monthly Expenditure" are taken from the column with the same heading on Stipulated Chart II.

The figures in the column entitled Difference are the result of subtracting the amounts for Assistance Unit 1 from Assistance Unit 2, Assistance Unit 2 from Assistance Unit 3, and so on.

The figures under the column headed by "%" were obtained by dividing the "Difference" by the amount for the smaller Assistance Unit Size. For example, the difference between A.U. 2 and A.U. 3 is \$61.99. \$61.99 was then divided by the amount awarded to A.U. 2.

The average change figure equals the percent changes divided by 9, the number of Assistance Unit Sizes.

STIPULATED CHART IV
FAP
DIFFERENCES BETWEEN ALL ASSISTANCE UNITS BY SIZE

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<u>ASSISTANCE UNIT</u>	<u>MONTHLY EXPENDITURE</u>	<u>DIFFERENCE</u>	<u>%</u>
1	\$ 71.12		
2	197.85	\$126.73	N.A.
3	259.84	61.99	31.3%
4	305.35	45.51	17.5%
5	350.12	44.77	14.7%
6	398.06	47.94	13.7%
7	450.39	52.33	13.1%
8	498.20	47.81	10.6%
9	538.23	40.03	8.0%
			13.5%
			AVERAGE CHANGE

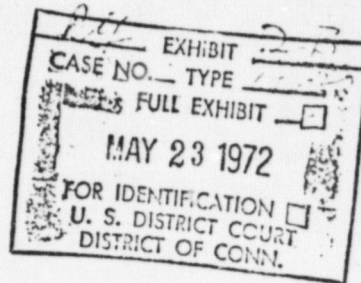
The average dollar difference (including A.U. 1) is \$58.39

The average dollar difference (excluding A.U. 1) is \$48.63

The average percentage difference (including the
difference between A.U. 1 and 2) is 35.9%

The average percentage difference (excluding the
difference between A.U. 1 and 2) is 15.6%

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STIPULATED CHART V
FAP
DIFFERENCES BETWEEN ASSISTANCE UNITS
EQUAL TO HOUSEHOLD UNITS BY SIZE

The data on Stipulated Chart V was obtained from that portion of Stipulated Chart II which was derived from the FLATGRNT II-ASSISTANCE UNITS EQUAL TO HOUSEHOLD UNITS printout (thus, the data on Stipulated Chart V can be traced to the printout FLATGRNT II), and from calculations involving the figures obtained from Stipulated Chart II.

The amounts under the column titled "Monthly Expenditures" are taken from the column with the same heading on Stipulated Chart II.

The figures in the column entitled Difference are the result of subtracting the amounts for Assistance Unit 1 from Assistance Unit 2, Assistance Unit 2 from Assistance Unit 3, and so on.

The figures under the column headed by "%" were obtained by dividing the "Difference" by the Amount for the smaller Assistance Unit Size. For example, the difference between A.U. 2 and A.U. 3 is \$50.35. \$50.35 was then divided by the amount awarded to A.U. 2.

The average change figure equals the percent changes divided by 9, the number of Assistance Unit Sizes.

STIPULATED CHART V
DIFFERENCES BETWEEN ASSISTANCE UNITS
EQUAL TO HOUSEHOLD UNITS BY SIZE

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<u>ASSISTANCE UNIT</u>	<u>MONTHLY EXPENDITURE</u>	<u>DIFFERENCE</u>	<u>PERCENT</u>
1	N.A.		
2	\$222.64		
3	272.99	50.35	22.6%
4	313.46	40.47	14.8%
5	353.66	40.20	12.8%
6	401.73	48.07	13.6%
7	448.88	47.15	11.7%
8	500.04	51.16	7.2%
9	539.62	38.58	9.4%
<hr/>			
TOTAL		315.98	941.0
AVERAGE		45.14	13.4%

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EXHIBIT	126a
CASE NO.	TYPE
FULL EXHIBIT	<input type="checkbox"/>
MAY 23 1972	
FOR IDENTIFICATION	<input type="checkbox"/>
U. S. DISTRICT COURT DISTRICT OF CONN.	

STIPULATED CHART VI
FAP
DIFFERENCE BETWEEN ASSISTANCE
UNITS UNEQUAL TO HOUSEHOLD UNITS BY SIZE

The data on Stipulated Chart VI was obtained from that portion of Stipulated Chart II which was derived from the FLATGRNT III - ASSISTANCE UNITS UNEQUAL TO HOUSEHOLD UNITS printout (Thus, the data on Stipulated Chart VI can be traced to the printout for FLATGRNT III), and from calculations involving the figures obtained from Stipulated Chart II.

The amounts under the column titled "Monthly Expenditure" are taken from the column with the same heading on Stipulated Chart II.

The figures in the column entitled Difference are the result of subtracting the amounts for Assistance Unit 1 from Assistance Unit 2, Assistance Unit 2 from Assistance Unit 3, and so on.

The figures under the column headed by "%" were obtained by dividing the "Difference" by the amount for the smaller Assistance Unit Size. For example, the difference between A.U. 2 and A.U. 3 is \$64.50. \$64.50 was then divided by the amount awarded to A.U. 2.

The average change figure equals the percent changes divided by 9, the number of Assistance Unit Sizes.



STIPULATED CHART VI
FAP
DIFFERENCES BETWEEN ASSISTANCE UNITS UNEQUAL
TO HOUSEHOLD UNITS BY SIZE

127a

ASSISTANCE UNIT	MONTHLY EXPENDITURE	DIFFERENCE	PERCENT
1	\$ 71.12		
2	156.61	85.49	120.2%
3	221.11	64.50	41.2%
4	272.50	51.39	23.2%
5	331.96	59.46	21.8%
6	377.04	45.08	13.8%
7	461.24	84.20	22.3%
8	488.26	27.02	5.9%
9	534.62	46.36	9.5%
TOTAL		463.50	257.9
AVERAGE		\$57.94	32.24%

If the difference between assistance units 1 and 2 is not included then:

TOTAL	378.01	137.7
AVERAGE	\$54.00	19.67%

